

**February 1999**

# **RAILROAD REGULATION**

## **Current Issues Associated With the Rate Relief Process**



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United States  
General Accounting Office  
Washington, D.C. 20548

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**Resources, Community, and  
Economic Development Division**

B-279888

February 26, 1999

The Honorable Byron L. Dorgan  
United States Senate

The Honorable John D. Rockefeller IV  
United States Senate

The Honorable Conrad R. Burns  
United States Senate

The Honorable Pat Roberts  
United States Senate

In response to your request, this report describes (1) the Surface Transportation Board's (Board) relief process for rail rate complaints and how it has changed since the ICC Termination Act of 1995 became law, (2) the number and outcome of rate relief cases pending or filed since 1990, and (3) the barriers that shippers face when bringing rate complaints to the Board and potential changes to the process to reduce these barriers.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 14 days after the date of this letter. At that time, we will send copies of the report to interested congressional committees, the Secretary of Transportation, and the Chairman, Surface Transportation Board. We will also make copies available to others upon request.

If you or your staff have any questions about this report, I can be reached at (202) 512-2834. Major contributors to this report are listed in appendix V.

A handwritten signature in cursive script that reads "Phyllis F. Scheinberg".

Phyllis F. Scheinberg  
Associate Director,  
Transportation Issues

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# Executive Summary

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## Purpose

As a result of mergers, bankruptcies and the redefinition of what constitutes a major railroad, the number of major freight railroads in the United States—collectively known as class I freight railroads—declined from 63 in 1976 to 9 in 1997.<sup>1</sup> These major railroads moved almost 1.6 billion tons of freight in 1997, generating \$35 billion in revenue. Some shippers and their associations have raised concerns that mergers and consolidations in the railroad industry have significantly reduced competition and have given large railroads wide latitude in controlling the rates they charge the many companies that use rail to transport their commodities. In 1995, the Congress passed the ICC Termination Act, which eliminated the Interstate Commerce Commission (ICC) and transferred various functions—including the adjudication of rail rate complaints—to the new Surface Transportation Board. The Board is a bipartisan, independent, adjudicatory body within the Department of Transportation.

Concerned about the potential barriers that shippers face in seeking relief from allegedly unreasonable rail rates, Senators Byron L. Dorgan, Conrad R. Burns, John D. Rockefeller IV, and Pat Roberts asked GAO to examine issues related to the Board's oversight of rates shippers pay. This report describes (1) the Board's rate relief complaint process and how it has changed since the ICC Termination Act of 1995 became law, (2) the number and outcome of rate relief cases pending or filed since 1990, and (3) the opinions of shippers about the barriers they face when bringing rate complaints to the Board and potential changes to the process to reduce these barriers. In the spring of 1999, GAO will issue a companion report that will address how freight railroad rates and service have changed since 1990.

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## Background

In the late 1970s, the freight railroad industry underwent severe financial distress. Several of the nation's largest freight railroads earned a negative rate of return on investment, and at least three railroads were in bankruptcy reorganization. The Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210) and the Staggers Rail Act of 1980 (P.L. 96-448) facilitated changes in the freight railroad industry, providing the railroads with greater flexibility to negotiate or set freight rates and respond to market conditions. In particular, the Staggers Rail Act made it federal policy for freight railroads to rely, where possible, on competition and the demand for services, rather than on regulation, to establish

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<sup>1</sup>In July 1998, the Surface Transportation Board approved the division of the Consolidated Rail Corporation's (Conrail) assets between CSX Transportation and Norfolk Southern, further reducing the number of class I railroads to eight.

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reasonable rates. As a result of the changes fostered by the acts, the freight railroads' financial health has improved.

Prior to 1976, the ICC regulated almost all the rates that railroads charged shippers. The 1976 and 1980 acts limited the regulation of the freight rail industry by allowing the ICC to regulate rates only where railroads had no effective competition and required that the ICC's process for resolving rate disputes address the issue of effective competition. The Board, the successor to the ICC, has no jurisdiction over rates that are negotiated between shippers and railroads—referred to as contract rates. Most rail tonnage in 1997—70 percent—moved under contracts and therefore was not subject to the Board's rate regulation. In addition, as a result of the statutory directive to exempt rail transportation from regulation where regulation is not needed, the Board has exempted from regulation the transportation of certain recyclable materials, some agricultural products, and intermodal containers. Traffic exempted from rate regulation accounted for 12 percent of all rail tonnage moved in 1997. As a result, in 1997, only about 18 percent of rail transportation rates in the United States was potentially subject to the Board's regulation. In addition to assessing the reasonableness of rates, the Board also approves mergers, acquisitions, line constructions, and line abandonments and must take into account the need of freight railroads to attain adequate revenues to cover their operating costs and provide a reasonable return on capital.

As part of GAO's methodology, GAO surveyed over 1,600 shippers and all nine class I railroads to obtain information about potential barriers to the rate complaint process and possible solutions to these potential barriers. GAO surveyed the members of the major associations of grain, coal, chemicals, and plastics shippers whose freight constitutes the largest portion of rail shipments. GAO's survey used a statistical sample from one of the associations GAO surveyed because the association's membership list was large. As a result, when GAO reports survey results, they are statistically projectable to the groups that responded to the survey.

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## Results in Brief

The Surface Transportation Board's standard procedures for obtaining rate relief are highly complex and time-consuming. Under these standard procedures, the Board (1) evaluates all competition within the market allegedly dominated by a railroad and (2) typically assesses the results of a shipper-developed model of a hypothetical, optimally efficient railroad that could provide comparable service in place of the shipper's railroad. The process reflects a statutory scheme whereby the Board must balance

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two competing objectives: considering the need of the railroad industry for adequate revenues while simultaneously ensuring that the industry does not exert an unfair advantage over shippers without competitive alternatives. Since the ICC Termination Act, the Board has attempted to improve the rate complaint process and simplify the process for shippers. For example, the Board has implemented alternative, simplified rate complaint procedures for cases that cannot be processed under the standard procedures; imposed case-processing deadlines; encouraged railroads and shippers to engage in an open dialogue about problems; and reduced its criteria for assessing whether a railroad dominates a shipper's market. It is too early to tell if these steps will significantly lessen the burden of the rate complaint process.

Very few shippers served by class I railroads have complained to the Board about the railroads' rates. As of January 1, 1990, 17 rate complaints were active with the Board's predecessor. Between January 1, 1990, and December 31, 1998, shippers filed 24 additional rate complaints with the Board (or its predecessor). The low number of complaints (41) is attributable to a number of factors, including growth in the number of private transportation contracts between railroads and shippers as well as a significant decline in railroad rates over the past 10 to 15 years. Shipper associations also noted that the complexity of the rate complaint process may have reduced the number of complaints. Generally, only those shippers that depend on rail transportation, such as coal, chemical, and grain shippers, have filed complaints. Eighteen of these complaints were resolved by negotiated settlements with the railroads before the Board or its predecessor determined whether the contested rate was reasonable. In addition, seven complaints were dismissed in favor of the railroad, five were dismissed for other reasons, and two complaints resulted in rate relief to shippers. Nine complaints remain before the Board.

GAO's results suggest that of the 709 rail shippers that responded, 531 do not believe that their rail rates are always reasonable and therefore might use the rate complaint process. Of the shippers who expressed an opinion about the rate complaint process, GAO estimates that over 70 percent believe that the time, complexity, and costs of filing complaints are barriers that often preclude them from seeking rate relief. All the major U.S. railroads, on the other hand, are generally satisfied with the standard rate complaint process, contending that it is well suited to determining whether a railroad dominates the shipper's market and what rate relief may be needed. However, railroads do not support the simplified procedures or the Board's December 1998 decision to change aspects of

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its market dominance approach. This divergence of opinion may make responding to shippers' concerns about the barriers in the rate relief process difficult to resolve. Some shippers view the improvements to the rate complaint process that the Board has made as helpful in easing the process's administrative burdens but unresponsive to what they see as underlying inadequacies in the level of competition in the railroad industry. They assert that adequate competition would negate the need for this complex process. Railroads maintain that competition is adequate and therefore no Board actions to promote competition are needed. These divergent and seemingly intractable views mirror the competing goals that the Board is charged with balancing as an agency and during a rate complaint case.

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## Principal Findings

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### The Surface Transportation Board's Standard Rate Complaint Process Is Time-Consuming, Costly and Complex

As a result of the 1976 and 1980 legislation that limited the regulation of the rail industry, the ICC and its successor, the Board, retained rate regulation only over freight traffic not subject to competition. Since the ICC was terminated, the Board has the authority to determine the reasonableness of challenged rates in the absence of competition. After a shipper files a complaint, the Board assesses whether the railroad dominates the shipper's transportation market. To determine this "market-dominance," the Board conducts quantitative and qualitative analyses. The Board first determines the railroad's revenues and variable costs (costs that vary with the quantity shipped) associated with moving the shipper's commodities. By statute, a railroad does not dominate the market if its revenue is no greater than 180 percent of its variable costs for transporting the shipper's commodities. If the railroad's percentage exceeds the statutory level, the Board next determines whether the shipper has a competitive alternative in the form of access to other railroads or other forms of transportation (trucks or barges). Until January 1999, the Board also considered two other forms of competition: the ability to ship from or to alternative locations (known as geographic competition) and the ability to effectively substitute other products for the one the railroad currently ships (known as product competition). If the Board finds that a railroad dominates the shipper's market, the Board proceeds with further assessments to determine whether the actual rate the railroad charges the shipper is reasonable.

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Under its standard guidelines, to determine whether a rate is reasonable, the Board requires the shipper to demonstrate how much an optimally efficient railroad would need to charge. To accomplish this task, the shipper must construct a model of a hypothetical, optimally efficient railroad to replace the dominant railroad. Shippers' associations and nearly 72 percent of rail shippers responding to GAO's survey indicated that constructing a hypothetical railroad is a difficult task, particularly for small shippers, because the time and cost associated with the model's development may outweigh the compensation afforded the shipper should the Board determine that the challenged rate was unreasonable. The 41 rate complaints that GAO reviewed cost shippers from about \$500,000 to \$3 million each and required a few months to about 16 years to resolve through the rate complaint process. The process is lengthy because the legal procedures afford the railroad and shipper a full opportunity to present their facts and viewpoints as well as the opportunity to present new evidence. The process also provides the opportunity for either side to respond to and challenge each other's information. In addition, Board officials stated that court reviews and the lack of rate standards when some complaints were filed have contributed to lengthy rate complaint cases.

Since the ICC Termination Act, the Board has attempted to reduce the potential barriers in the rate complaint process. The Board has implemented alternative guidelines to simplify complaints involving lower dollar amounts, and it has established specific deadlines for accelerating steps in the rate relief process. To further simplify the process, the Board eliminated product and geographic competition as criteria for determining market dominance, which many shippers had identified as a major barrier. The Board concluded that these elements of competition complicated and prolonged rate complaint proceedings and discouraged shippers from pursuing rate complaints. In addition, the Board has encouraged private discussions between shippers and railroads to settle their differences. It is too early to assess the collective results of these recent actions because the Board has not rendered a decision under the simplified guidelines or the accelerated schedule.

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### **Few Shippers File Complaints, and Few Rates Are Found to Be Unreasonable**

Since January 1, 1990, 41 complaints have been filed with or are pending before the ICC or the Board; only two shippers filed a rate complaint in 1998. The low number of complaints may be attributed to the growth in the number of private transportation contracts between railroads and shippers not subject to rate regulation, a general decline in railroad rates



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over the past 10 to 15 years, or the perceived complexity of the rate complaint process. Coal, chemical, and grain shippers that accounted for 60 percent of the total rail traffic for large railroads in 1997 filed 31 of the 41 complaints.

The Board or its predecessor dismissed nearly half—18 of the 41—complaints because the shipper and railroad settled their differences during the rate review process and then requested the case to be dismissed. Five additional complaints were dismissed primarily because the rate was either subject to a contract or the remedy that the shipper wanted was not available. Seven complaints were dismissed in favor of the railroad when it was found that either the railroad did not dominate the shipper's market or the rate was reasonable. In two cases, the Board decided in favor of the shipper, awarded damages and prescribed maximum rates for the future. As of December 31, 1998, the Board has not rendered a final decision on the nine remaining complaints.

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## Opinions Differ on the Barriers and Solutions to the Rate Complaint Process

GAO surveyed over 1,600 shippers, and we are reporting on 709 that use rail to transport their products. The survey results suggest that about 75 percent of these rail shippers believe that at times, they were charged rates they did not consider reasonable. However, they assert that barriers to seeking rate relief precluded them from using the Board's rate complaint process. In response to GAO's survey and in discussions with commodity shipping associations, shippers cited several barriers to using the rate complaint process but particularly emphasized the time, cost and complexity involved in filing a rate complaint. Shippers' associations contend that these barriers, as well as the low number of rate complaints that shippers have won, demonstrate a regulatory environment that does not adequately address shippers' rate complaints. GAO's estimates show that at least 70 percent of shippers want the Board to shorten the time for deciding rate complaints, reduce the costs associated with preparing and filing complaints, and take measures to simplify the process. Some shippers and their associations also contend that the improvements already made to the rate complaint process are at best incremental steps and point to a lack of competition in the railroad industry as the underlying problem. Some rail shippers believe that greater competition would lower rates and diminish the need for the rate relief process.

In response to a separate GAO survey, the nine class I freight railroads offer a different view on the rate complaint process and railroad competition. In general, railroads disagree with shippers about the extent to which the

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rate complaint process is burdensome. While the railroads acknowledge the importance of shippers' concerns, they state that the standard rate complaint process is well suited to determining the reasonableness of rates, and therefore no changes in the process are necessary. Railroad officials state that they are willing to work with shippers and the Board to improve the process and reduce the burden on shippers, provided that the process maintains the necessary elements to effectively determine market dominance. The officials contend that shipping rates declined by 46 percent from 1982 through 1996 and that market forces continue to provide adequate competition. The railroads assert that increasing competition through additional regulation is not appropriate in situations in which market dominance has not been shown. They are concerned that increased federal regulation could stifle the growth of the industry and hinder the capital investment necessary to maintain and expand the rail infrastructure in the United States.

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## Agency Comments and GAO's Evaluation

GAO provided a draft of this report to the Department of Transportation and the Surface Transportation Board for review and comment. GAO also discussed the report with officials from the Department and the Board, including the Board's Deputy General Counsel, directors of three board offices, and a representative from the Chairman's office; as well as a representative from the Federal Railroad Administration's Office of Policy. The Board indicated that the draft report should provide additional information to better depict (1) the complex task the Board faces in balancing competing statutory policy objectives, (2) the strides the Board has undertaken to streamline and simplify the rail rate complaint process, and (3) external factors that can affect the length of time required to complete action on a rate complaint. In addition, the Board expressed concerns about the methodology GAO used to conduct its survey of rail shippers, such as how the results of the survey were portrayed.

In response, GAO has added information in the report to better reflect the competing policy objectives that the Board must balance as it reviews rate complaints. GAO has also cited additional factors in the report that the Board noted can affect the length of time required to complete rate complaints. GAO believes that it has sufficiently depicted the strides the Board has undertaken to simplify the rate complaint process. In the absence of any cases initiated under the simplified procedures since they were instituted in 1996, GAO has not revised the report because GAO believes that it is too early to declare the simplified procedures a success. Finally, GAO has added information to better explain the methodology used

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to survey rail shippers and more clearly convey the survey's results. The Board's comments and GAO's evaluation appear at the end of each report chapter. In addition, the Board provided technical comments on the report, including updated information on the 41 cases GAO reviewed. Where appropriate, GAO incorporated these comments into the report.

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# Contents

<b>Executive Summary</b>		2
<b>Chapter 1</b>		14
<b>Introduction</b>	Changes in the Freight Railroad Industry	14
	The Surface Transportation Board	15
	Objectives, Scope, and Methodology	18
	Agency Comments and Our Evaluation	22
<b>Chapter 2</b>		23
<b>The Board's Rail Rate</b>	The Standard Rate Complaint Process Is Complex	23
<b>Complaint Process</b>	Too Early to Assess the Board's Actions to Ease Shippers' Burdens	30
	Agency Comments and Our Evaluation	32
<b>Chapter 3</b>		35
<b>Decline in Complaints</b>	Few Shippers Complained About Rail Rates	35
<b>Filed, and Few Rates</b>	Resolving Rate Cases Can Take Considerable Time	38
<b>Have Been Found</b>	Few Cases Complete the Rate Complaint Process	40
<b>Unreasonable</b>	Agency Comments and Our Evaluation	44
<b>Chapter 4</b>		45
<b>Barriers to the Rate</b>	Time, Cost, and Complexity Keep Shippers From Filing Rate Complaints	45
<b>Complaint Process</b>	Challenges in Improving the Rate Complaint Process	49
<b>and Possible</b>	Prospects for Increasing Competition in the Railroad Industry	56
<b>Solutions</b>	Agency Comments and Our Evaluation	59
<b>Appendixes</b>	Appendix I: McCarty Farms, Inc. et al. v. Burlington Northern, Inc.	62
	Appendix II: Rate Complaints Either Pending or Filed With the Board, 1990-98	65
	Appendix III: Survey Response Frequencies	71
	Appendix IV: Survey of U.S. Class I Railroads	96
	Appendix V: Major Contributors to This Report	110
<b>Tables</b>	Table 1.1: Association Memberships Selected, Shippers Surveyed by GAO, and the Survey Response Rate	20

---

Table 3.1: Resolution of Rate Reasonableness Decisions, 1990-98	39
Table 3.2: Phase in Which the Parties Settled or the ICC/Board Dismissed Complaint	43
Table 4.1: Percentage of Rail Shippers Responding That a Barrier Was a Major or Moderate Reason for Not Filing a Rate Complaint	46
Table 4.2: Percentage of Rail Shippers Responding That Options for Improving the Rate Complaint Process Were Extremely to Very Important	50
Table 4.3: Percentage of Rail Shippers Responding That Increasing Aspects of the Railroad Competition Was Extremely to Very Important	57
Table II.1: Complaints Dismissed at Shipper's Request	65
Table II.2: Complaints Dismissed/Discontinued in Favor of the Railroad	67
Table II.3: Complaints Otherwise Dismissed	68
Table II.4: Complaints Decided in Favor of the Shipper	69
Table II.5: Complaints Pending With the Board	69
Table III.1: Percentage of Shippers Using Various Transportation Modes, 1997	89
Table III.2: Average Annual Out-bound Rail Shipments by Commodity	90
Table III.3: Percentage of Annual Rail Shipments Using Company-owned Rail Cars	90
Table III.4: Percentage of Shipments Using Contract Rates or Published Tariff Rates Since 1990	91
Table III.5: Percentage of Public Tariff Shipments Exempt From Federal Regulation	91
Table III.6: Percentage of Rail Shippers Who Indicated that Their Shipments Went From Origin to Destination Using Only One Railroad, 1990 and 1997	92
Table III.7: Percentage of Rail Shippers Who Believed That A Barrier Was a Major or Moderate Reason for Not Filing a Rate Complaint	93
Table III.8: Percentage of Rail Shippers That Believe Suggested Changes for Improving the Rate Complaint Process Were Extremely to Very Important	94
Table III.9: Percentage of Rail Shippers Who Believed That Increasing Aspects of Rail Competition Was Extremely to Very Important	94

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**Figures**

Figure 1.1: Percent of Rail Tonnage Moved in 1997	16
Figure 2.1: The Board's Rail Rate Complaint Process	25
Figure 3.1: Rate Complaints Filed With ICC/Board, 1980-98	36
Figure 3.2: 41 Complaints Pending or Filed Since January 1, 1990, by Commodity	37
Figure 3.3: Status of 41 Rate Complaints, as of December 31, 1998	41

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**Abbreviations**

AAR	Association of American Railroads
ASLRRRA	American Short Line and Regional Railroad Association
CMP	Constrained Market Pricing
DOT	Department of Transportation
FRA	Federal Railroad Administration
ICC	Interstate Commerce Commission
NCGA	National Corn Growers Association
NGFA	National Grain and Feed Association
STB	Surface Transportation Board



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# Introduction

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In response to financial stresses in the railroad industry, the Congress passed legislation in 1976 and 1980 that dramatically reduced federal regulation over the industry. As a result of the 1976 and 1980 legislation, most rail traffic in the United States is not subject to the Surface Transportation Board's (the Board) rate regulation, and fewer large railroads account for most of the industry's revenue and mileage operated. The Board, established pursuant to the ICC Termination Act of 1995, is a bipartisan, independent, adjudicatory body that is organizationally housed within the Department of Transportation (DOT). The Board is responsible for the economic and rate regulation of freight railroads and certain pipelines, as well as some aspects of motor and water carrier transportation.

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## Changes in the Freight Railroad Industry

The Railroad Revitalization and Regulatory Reform Act of 1976 and the Staggers Rail Act of 1980 facilitated changes in the freight railroad industry. These acts provided the railroads with greater flexibility to negotiate freight rates and respond to market conditions. The Staggers Act in particular made it federal policy that freight railroads would rely, where possible, on competition and the demand for services rather than on regulation to establish reasonable rates. As a result of mergers and acquisitions fostered by these statutes, as well as changes in bankruptcies and changes in the definition of a class I railroad, the number of large railroads in the United States has declined substantially from the 63 class I railroads operating in 1976 to nine by 1997.<sup>1</sup>

In spite of the reduction in the number of class I freight railroads, these railroads accounted for 91 percent of the industry's freight revenue and 71 percent of the industry's mileage operated. In 1997, class I freight railroads originated almost 1.6 billion tons of freight, of which coal, farm products, and chemicals accounted for about 61 percent. The nine class I freight railroads in 1997 were the Burlington Northern and Santa Fe Railway Co.; CSX Transportation; Consolidated Rail Corporation; Grand Trunk Western Railroad, Inc.; Illinois Central Railroad Co.; Kansas City Southern Railway Co.; Norfolk Southern Corp.; Soo Line Railroad Co.; and Union Pacific Railroad Co.

Since 1997, additional railroad consolidations have occurred. In July 1998, the Board approved the division of the Consolidated Rail Corporation's

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<sup>1</sup>According to Board officials, these 63 class I railroads represented independent 30 rail systems. The Board classifies railroads according to operating revenues. For 1997, class I railroads had annual operating revenue of \$256.4 million or more; class II railroads had revenues of \$20.5 million to \$256.4 million; and class III railroads had revenues of less than \$20.5 million.



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(Conrail) assets between CSX Transportation and Norfolk Southern Railway. This will reduce the number of class I freight railroads to eight in 1999. Also, in July 1998, Canadian National Railway, the Canadian parent of Grand Trunk Western Railroad, Inc., requested the Board's authorization to acquire Illinois Central Railroad Company. The Board's proposed schedule provides for a final decision on the proposed acquisition no later than May 25, 1999. Officials from the Federal Railroad Administration (FRA) believe that within the next 5 to 10 years, the remaining class I railroads could be merged into two transcontinental railroads.<sup>2</sup>

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## **The Surface Transportation Board**

The ICC Termination Act of 1995 eliminated the ICC and transferred its core rail adjudicative functions and certain non-rail functions to the Board. Among other things, the Board has economic regulatory authority over freight railroads, addressing such matters as the reasonableness of rates, mergers and line acquisitions, line constructions, and line abandonments. Under the statute, the Board is responsible for balancing shipper and railroad interests by assisting railroads in their efforts to earn adequate revenue to cover their costs and provide a reasonable return on capital while ensuring that shippers that depend on one railroad are protected from unreasonably high rates.

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## **The Board's Oversight of Railroad Rates**

The 1976 and 1980 acts provided railroads with significant flexibility to negotiate freight rates and respond to market conditions. The 1976 act retained federal rate regulation only for traffic where the railroad dominates the market, that is, it provides service for which there is no effective competition to otherwise control rates. In such cases, the ICC had jurisdiction to determine whether a challenged rate was reasonable and, if unreasonable, to award reparations and prescribe a maximum rate. The Staggers Rail Act built on the reforms of the 1976 act by establishing a threshold under which railroads would not be considered market dominant. The ICC Termination Act transferred this regulatory function to the Board.

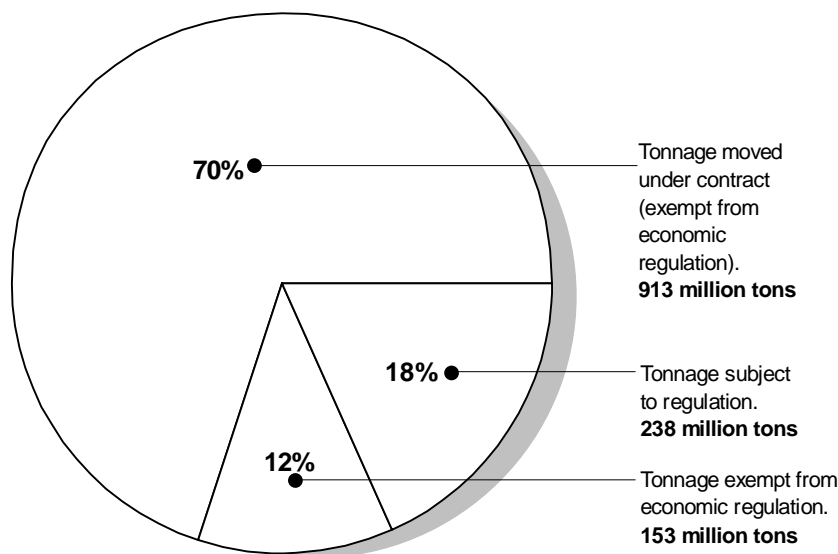
The Staggers Rail Act permitted railroads to negotiate transportation contracts containing confidential terms and conditions that are beyond the Board's authority while in effect. As figure 1.1 shows, most rail tonnage in 1997—70 percent—moved under contracts between the railroads and

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<sup>2</sup>FRA enforces federal railroad safety statutes under a delegation of authority from the Secretary of Transportation. FRA's mission is to protect railroad employees and the public by ensuring the safe operation of freight and passenger trains.

shippers involved and therefore was not subject to the Board's rate regulation.

**Figure 1.1: Percent of Rail Tonnage Moved in 1997**



Source: Association of American Railroads.

Shipments exempted from rate regulation accounted for an additional 12 percent of all rail tonnage moved in 1997. The Board is required to exempt any person or class of persons, or a transaction or service, from regulation, where regulation is not needed to carry out congressionally set rail transportation policy and either the transaction or service is of limited scope or regulation is not needed to protect shippers from an abuse of market power. For example, in April 1998, the Board exempted 29 nonferrous recyclable commodity groups from the Board's regulation. The Board found that trucks play a significant role in the transportation of these commodity groups. Therefore, the Board found that railroads do not possess sufficient market power to abuse shippers. Other exemptions issued for the same reason include those for boxcar traffic, certain agricultural products, and intermodal transportation.

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The remaining traffic, potentially subject to rate regulation, accounted for 18 percent of rail tonnage in 1997. However, the Board's jurisdiction over this traffic is further limited because it may only provide rate relief where the revenue-to-variable cost percentage exceeds 180 percent and where there is no effective competition.<sup>3</sup>

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## The Board's Oversight of Revenue Adequacy

During the 1970s, the railroad industry was in weak financial condition with a rate of return on net investment of 1.2 percent in 1975,<sup>4</sup> and a return on shareholders' equity of about 1.9 percent. By contrast, manufacturing companies and utilities earned rates of return in 1975 of about 15 and 12 percent, respectively.<sup>5</sup> The financial community was concerned about the railroads' long-term viability, since the industry faced cash flow difficulties and marginal credit ratings. The 1976 act required the ICC to develop standards for determining whether railroads' were earning adequate revenues to cover their operating costs and provide a reasonable return on capital. The act provided that railroads' revenue should (1) provide a flow of net income plus depreciation adequate to support prudent capital outlays, ensure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (2) attract and retain capital in amounts adequate to provide a sound transportation system. Despite the reforms of the 1976 act, in 1980, the Congress found that railroads' earnings were still insufficient to generate the funds they needed to make improvements to their rail facilities. While the 1976 act required the ICC to develop standards for the adequacy of railroad revenue, the Staggers Rail Act of 1980 required the ICC to determine annually which railroads were earning adequate revenues and to consider revenue adequacy goals when it reviewed the reasonableness of rates. According to Board officials, even today, the profitability of class I railroads is among the lowest of major industries.

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## The Board's Other Oversight Responsibilities

When two or more railroads seek to consolidate through a merger or common control arrangement, they must obtain the Board's approval; transactions requiring the Board's approval are not subject to the antitrust

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<sup>3</sup>According to Board officials, 70 percent of rail traffic is removed from the Board's rate reasonableness jurisdiction because it yields revenue-to-variable cost percentages below the statutory 180 percent threshold.

<sup>4</sup>The rate of return on net investment is the relationship of railroads' net operating income to average net investment in transportation property.

<sup>5</sup>These returns may not be directly comparable because before 1983 the railroad industry used the retirement-replacement-betterment accounting system for reporting on rail track and structures. In 1983, ICC adopted the depreciation basis of accounting for these items.

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laws or other federal, state, and municipal laws. During a merger proceeding involving two or more class I railroads, the Board is required to consider, among other things, how the merger will affect competition among railroads (either in the affected region or in the national transportation system), railroad employees, the environment, and the adequacy of transportation provided to the public.

As part of its regulatory responsibilities, the Board also addresses informal and formal complaints that railroads have failed to provide reasonable rail service to shippers. The Board oversees other rail matters, such as line constructions and abandonments. Railroads that want to either construct a new rail line or abandon an existing one must generally obtain the Board's approval.

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## Objectives, Scope, and Methodology

Concerned about the potential barriers that shippers face in seeking relief from allegedly unreasonable rail rates, Senators Byron L. Dorgan, Conrad R. Burns, John D. Rockefeller IV, and Pat Roberts asked us to describe (1) the Board's rate relief complaint process and how it has changed since the ICC Termination Act of 1995 became law, (2) the number and outcome of rate relief cases pending or filed since 1990, and (3) the opinions of shippers as to the barriers they face when bringing rate complaints to the Board and potential changes to the process to reduce these barriers. At their request, we are also providing information on McCarty Farms, Inc. et al. v. Burlington Northern, Inc. In addition, in the spring of 1999, GAO will issue a companion report that will address how freight railroad rates and service have changed since 1990.

To describe the rate complaint process and how it has changed since the ICC Termination Act, we reviewed prior GAO reports and the Board's documents, applicable statutes and regulations, and decisions. We met with Board officials, shippers' organizations, and the AAR to gain a thorough understanding of the process. We then summarized the rate relief process and obtained comments on our summary from the Board. Board officials provided clarification where necessary, and their comments are included in our report. Our description of the rate relief process is contained in chapter 2.

To determine the number and outcome of rate relief cases filed and/or pending since 1990, we obtained the rate complaints either filed with or pending before the Board or its predecessor, the ICC, from January 1, 1990, through December 31, 1998. We compared the number of complaints filed

between January 1, 1990, and December 31, 1998, with the number of complaints that shippers filed from 1980 through 1990. We reviewed the complaints to determine, among other things, their nature, the complaint process used in filing them and their outcome. We also examined the complaints to determine the types of commodities involved, whether the railroad was found to be market dominant, how much time the agency required to make a rate-reasonableness determination, and the rationale for the determination. The Board's requirement that railroads demonstrate product and geographic competition for traffic subject to a challenged rate was in effect during the course of our review. We did not independently verify the information provided by the Board regarding the number of complaints filed or pending since January 1, 1990. In addition, we did not review the merits of the ICC's or the Board's decisions or the appropriateness of the outcome.

To determine shippers' views on the rate relief process and suggestions for improvement, we mailed a questionnaire to members of 11 commodity associations that ship using rail in the United States. To identify the individual shippers of each commodity, we obtained the membership lists from each association we contacted. To identify these shippers, we selected three commodity classifications representing four commodities that constitute the largest volume of rail shipments—bulk grain,<sup>6</sup> coal, chemicals, and plastics.<sup>7</sup> In order to identify a sufficient cross-section of wheat shippers, we selected wheat associations in states with the largest wheat production (by volume) for 1997, using data on wheat production from the U.S. Department of Agriculture's Economic Research Service. We selected the top three wheat-producing states—Kansas, North Dakota, and Montana—and contacted the grain shipper associations in these states. For the remaining commodity classifications, we contacted the national associations representing the shippers of each commodity.

For the nine associations that provided a relatively small number of members, we surveyed all of the members contained on the lists provided. For the two associations that provided a relatively large number of members, we selected a random sample of members for our survey. In instances where a random sample was conducted, the sample can be generalized to the association's membership. Table 1.1 lists the associations we contacted, the number of members in each association,

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<sup>6</sup>Corn, wheat, soybeans, sorghum, barley and rye, and oats represent nearly all grain movements in the United States.

<sup>7</sup>Railroad Facts, 1998 Edition, Association of American Railroads, Oct. 1998.

the number of shippers we selected from each list to represent a statistically valid sample of each association, and the response rate.

**Table 1.1: Association Memberships Selected, Shippers Surveyed by GAO, and the Survey Response Rate**

<b>Association contacted</b>	<b>Number of members</b>	<b>Number of shippers surveyed</b>	<b>Valid response rate</b>
Chemical Manufacturers Association	160	160	57.5
Edison Electric Institute	91	91	67.0
Kansas Grain and Feed Association	320	320	66.9
Montana Grain Elevator Association	93	93	36.6
National Corn Growers Association	52,353	400	54.0
National Grain and Feed Association	747	399	67.9
National Mining Association	113	113	43.4
North Dakota Grain Dealers Association	280	280	50.7
Society of the Plastics Industry	237	237	47.3
Western Coal Traffic League	15	15	86.7
Western Fuels Association	9	9	44.4
<b>Subtotal</b>	<b>54,418</b>	<b>2,117</b>	
Shippers with complaints filed or pending since 1990 <sup>a</sup>	32	32	12.5
<b>Total</b>	<b>54,450</b>	<b>2,149</b>	<b>60.1</b>

<sup>a</sup>We mailed surveys to the shippers who had complaints filed or pending with the ICC and the Board since 1990. These shippers are not included in the number of shippers surveyed from the associations. Two shippers filed complaints with the Board in 1998, after our survey was mailed to shippers.

The selection of 2,149 shippers was reduced by 92 to account for shippers who were members of more than one association, leaving 2,057. In analyzing the questionnaires that were returned, we discovered that a very small percentage of National Corn Growers Association (NCGA) members were rail shippers. Of the questionnaires returned by NCGA members, only six indicated they were rail shippers. This does not yield a statistically valid result, and therefore we dropped the NCGA membership from our statistical analysis. As a result, we reduced our sample of 2,057 by the 400 NCGA members we sampled. This results in an adjusted sample size of 1,657. Of the 1,657 grain, coal, chemicals and plastics shippers we surveyed, 996 (or 60.1 percent) returned our survey. The response rates for grain, coal, chemicals and plastics shippers were 61 percent, 62 percent, and 55 percent, respectively.

Because the National Grain and Feed Association's (NGFA) membership was large, we sent our survey to a randomly selected sample of NGFA members. Our sample was statistically drawn and weighted so that we could generalize the responses of the NGFA members we surveyed to the entire membership for each question in the survey. The weights apply only to NGFA member responses and not the responses of the other shippers because we surveyed the entire membership of the other associations. We statistically combined the sample with the responses from the other 10 groups and reported weighted estimates for each question in the survey. As a result, the views and opinions of the shippers we surveyed are generalizable to the views and opinions of the 11 groups we surveyed.

Not all shippers who responded to our survey were rail shippers, however. Therefore, our analysis only considers the responses of shippers that indicated that they were rail shippers, and have used rail in at least one year since 1990. Based on our sampling and analysis techniques, our results are based on an estimate of 709 shippers who shipped grain, coal, chemicals, or plastics by rail in at least one year since 1990. The responses of the 709 rail shippers are used as the core of our statistical analysis.

Some of our estimates do not always represent the entire population because some shippers did not answer all questions. We have indicated the number of missing responses for each question in appendix III. In all instances where we discuss our survey results, we are referring to the rail shippers belonging to the groups we surveyed. Our statistical analyses of data collected are presented in chapter 4. A detailed technical appendix and our questionnaire results are presented in appendix III.

To determine the railroad industry's views on shippers' suggestions to improve the rate relief process and competition in the railroad industry and to collect additional data on rate complaint cases, we mailed a questionnaire to each of the nine class I railroads with operations in the United States. The questionnaires asked the railroads to indicate the significance of barriers caused by the standard rate complaint process and their opinions regarding shippers' suggestions to improve the process and increase competition in the railroad industry. In addition, we asked them for information regarding any rate complaint cases in which they were involved, including the number of complaints and the outcome of each complaint. AAR officials answered questions pertaining to the rate relief process and competition issues on behalf of the railroads. Each individual railroad was asked to answer questions regarding rate complaints pertaining to its company. We did not receive a sufficient number of

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responses from the railroads regarding the rate complaints to provide any additional data on the cases filed and or pending since 1990. We therefore relied on our independent analysis of the Board's case files and did not include the small number of responses from the class I railroads. We summarized the data collected through the use of the railroad questionnaire and summaries of that analysis are presented in chapter 4 and appendix IV.

We performed our work from February 1998 through February 1999 in accordance with generally accepted government auditing standards.

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## **Agency Comments and Our Evaluation**

In commenting on a draft of this report, the Board disagreed with our statistic that 88 class I railroads operated in 1976 and contended that 63 class I railroads, representing 30 independent rail systems, operated in that year. Furthermore, the Board noted that of these 30 rail systems, 9 were subsequently reclassified as smaller (class II or III) railroad systems as the revenue thresholds for class I status were raised, and 2 systems ceased operations as a result of bankruptcy. Thus, officials stated, the actual reduction in the number of class I railroad systems from 1976 to 1998 that resulted from mergers and consolidations was from 19 to 9.

Our count of 88 class I railroads was based on information from FRA's annual safety bulletins. To be consistent with the Board, we changed the number of class I railroads in 1976 to 63 and provided additional information on the 30 systems these class I railroads represented. However, we disagree with the Board's assertion that the number of 1976 railroad systems should be further reduced to 19. While the number of systems may have declined after 1976, Board statistics show that 30 railroad systems operated in 1976.



# The Board's Rail Rate Complaint Process

While there have been some changes to the rate complaint process since the ICC Termination Act, the process continues to be relatively complex and time-consuming. However, within the limits of the law, the Board has taken steps to reduce the complexity of the process, such as adopting simplified guidelines for determining the reasonableness of challenged rates and addressing some of the barriers to filing a complaint.

## The Standard Rate Complaint Process Is Complex

The rate complaint process in larger cases is a complex administrative proceeding involving difficult issues. When a shipper files a rate complaint, the Board must assess many factors related to competition and the disputed rate. The Board first determines whether the railroad dominates the shipper's transportation market. If the Board finds that a railroad is market dominant, the Board then conducts an economic analysis designed to determine the lowest rate than an optimally efficient railroad would need to charge to cover its costs. If the hypothetical railroad's rate is less than the rate that the dominant railroad charges, the Board may order reparations for past shipments or prescribe rates for future shipments.

## The Board Must Address Many Procedural Issues

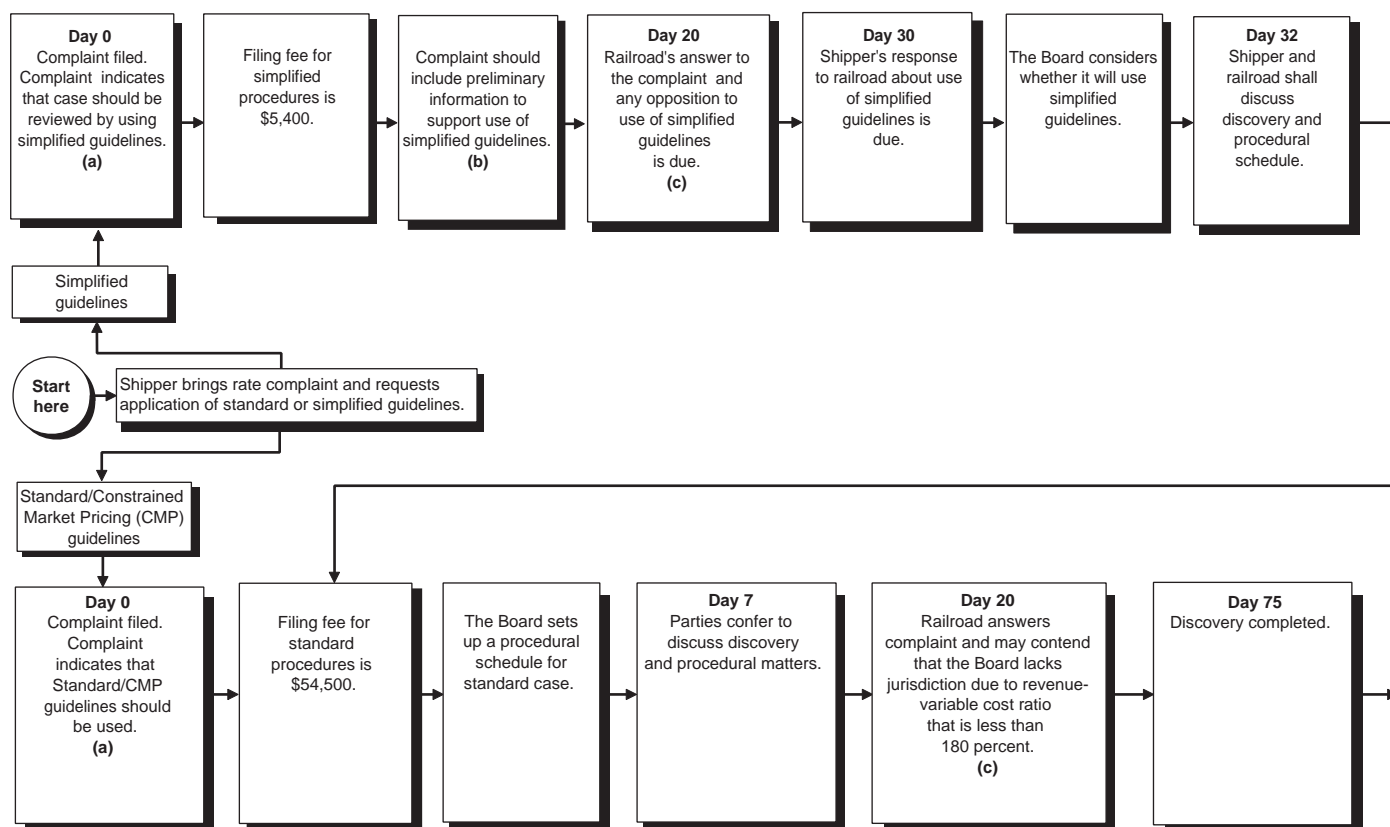
The Board addresses a shipper's complaint in an administrative proceeding during which the shipper and the railroad have the opportunity to develop and present evidence supporting their positions. Under the ICC Termination Act, a case may only be initiated upon a shipper's complaint. A complaint must indicate whether the Board should examine the challenged rate under the Board's more complex standard or its simplified guidelines and provide information to enable the Board to decide which guidelines to apply.<sup>1</sup> The Board charges a fee to process the complaint. In February 1999, the Board raised the filing fee for a case brought under the standard guidelines to \$54,500—20 percent of the 1999 cost to the agency of adjudicating a rate complaint. The Board also raised the fee for cases brought under the simplified guidelines issued after the ICC Termination Act to \$5,400. After the case is initiated, the parties use a variety of tools to obtain information from each other and present evidence supporting their positions under a schedule established by regulation or by the Board. The Board must decide cases under the standard guidelines within 9 months after the close of the administrative record and cases under the simplified guidelines within 6 months. For cases under the standard guidelines, the Board's goal is to complete the entire process in 16 months. The railroad

<sup>1</sup>The standard guidelines are often referred to as Constrained Market Pricing (CMP) or "coal rate" guidelines. These guidelines were originally designed for challenges to coal rates. However, they have since been applied to challenges for rates on other commodities.

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or shipper may make an administrative appeal to the Board or request judicial review of the Board's decision after exhausting all administrative options. According to shipper representatives, a complaint can cost a shipper from about \$500,000 to \$3 million. Figure 2.1 illustrates the dates that govern key parts of the process, including discovery, filing of evidence, and the date by which the Board has to make a final decision.

Figure 2.1: The Board's Rail Rate Complaint Process



Notes:

(a) The Board first determines if it has jurisdiction to adjudicate the complaint by determining whether the railroad is market dominant (49 U.S.C. 10707). The Board reviews the revenue-variable cost ratio and the types of competition. Jurisdictional issues can be raised at any time during the complaint process.

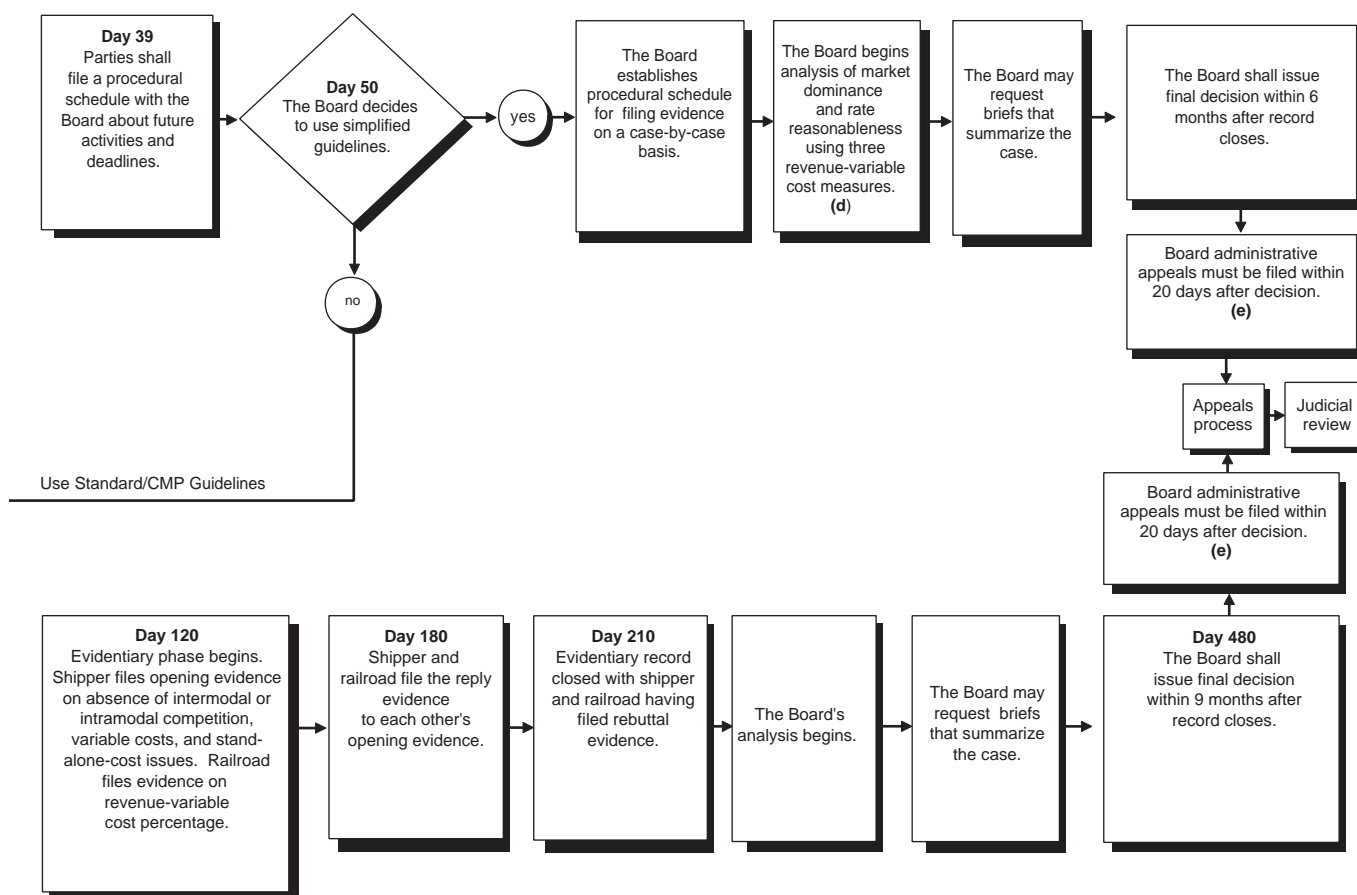
(b) The information needed to support the shipper's view that the board should examine the reasonableness of the rate using the simplified guidelines consists of (1) a general history of the traffic; (2) the specific commodity; (3) the origins and destinations; (4) the amount of traffic; (5) the total revenue paid per carload and by commodity; (6) the feasibility and cost of preparing a stand-alone-cost analysis; (7) the estimated other costs of pursuing the rate complaint; (8) the relief requested; (9) the present value of relief requested; and (10) the supporting assumptions, calculations, and other documentation.

(c) An answer to a complaint may be accompanied by a motion to dismiss the complaint or a motion to make the complaint more definite. A motion to dismiss may be filed at any time during the proceedings. Also, a shipper may, within 10 days after an answer is filed, file a motion to make the answer more definite.

(d) The Board uses three revenue-variable cost measures to assess rate reasonableness and recognizes that they should be supplemented in each case by more individualized analyses from both shippers and railroads. These measures are the (1) revenue shortfall allocation measure; (2) revenue-variable costs greater than 180 percent; and (3) a revenue-variable cost comparison.

(e) At any time, a party may petition to reopen an administratively final action of the board by citing material error, new evidence, or substantially changed circumstances. Parties may also petition for a stay of an action pending a request for judicial review, for an extension of the compliance date, or for modification of the date the decision takes effect. Such petitions must generally be filed at least 10 days before the effective date.

## Chapter 2 The Board's Rail Rate Complaint Process



Sources: Surface Transportation Board; ICC Termination Act of 1995; 49 CFR Parts 1002 through 1115.

The Board's regulations require the parties to discuss discovery matters within 7 days after a complaint is filed. However, either side may be reluctant to share information, particularly information that may damage its case. Disputes have also arisen when a shipper contended that a railroad's discovery requests were unfairly burdensome. For example, in a 1998 case, *FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company*, the Board limited the railroad's broad requests for information on possible product- and geographic-based competition.

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The Board found that through its broad discovery requests, the railroad had improperly attempted to shift the burdens of identifying product and geographic competition to the complaining shipper. As a result, the Board imposed restrictions limiting discovery requests. The Board later removed product and geographic competition from consideration in all cases.

Shipping groups told us that obtaining information during the discovery process can be difficult and that railroads make it burdensome and time-consuming for them. Furthermore, shippers are reluctant to challenge railroads during discovery, fearing that an extended schedule will lead to added costs and the continued disruption of daily operations. On the basis of survey responses, we estimate that about 67 percent of the rail shippers indicated that difficulty in getting necessary data from the railroads would preclude them from filing a rate complaint. While railroads told us that procedural barriers should not be an obstacle in a rate complaint process, they believe that product and geographic competition tests are important aspects of proving that shippers have alternatives to the dominant railroad.

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### **Rate Relief Cases Require Determination of Market Dominance**

By statute, the Board may assess whether a challenged rate is reasonable only if the railroad dominates the shipper's transportation market. The requirement to determine market dominance originated with the 1976 act, which broadly defined market dominance as the absence of effective competition from other railroads or other modes of transportation. Underlying this statutory directive was the theory that if the railroad did not dominate the market, competitive pressures would keep rail rates at a reasonable level. The Staggers Rail Act retained this requirement and tied the definition of market dominance to rail rates exceeding a certain revenue-to-variable cost percentage.

An analysis of market dominance contains both quantitative and qualitative components. Quantitatively, the Board first determines if the revenue produced by the traffic transported is less than 180 percent of the railroad's variable cost of providing the service. By statute, a railroad is not considered to dominate the market for traffic that is priced below the 180-percent revenue-to-variable cost level. If the revenue produced by the traffic exceeds the statutory threshold, the Board conducts a qualitative analysis using data the shipper and railroad provide on competition. The shipper must prove that it does not have (1) access to more than one competing railroad or combination of railroads that can transport the same commodity between the same origin and destination points

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(intramodal competition) or (2) access to other competing modes of transportation, such as trucks or barges, that could transport the same commodity between the same origin and destination points (intermodal competition). Until January 1999, the railroad had to show that the shipper had (1) access to alternative origin or destination points for the same commodity (geographic competition) and (2) access to alternative products that could be substituted for the commodity in question (product competition).<sup>2</sup>

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**The Board Determines  
Whether the  
Market-Dominant  
Railroads' Rates Are  
Reasonable**

Until the 1976 act, the ICC regulated almost all rates and judged their reasonableness by various cost formulas and/or by comparing a challenged rate with an established rate for similar freight movements. Together, the 1976 act and the Staggers Rail Act provided railroads with significant flexibility to set rates in response to market conditions.<sup>3</sup> However, neither the Staggers Rail Act nor the 1976 act prescribed quantitative measures for the ICC to use in determining rate reasonableness. In February 1983, the ICC proposed new Constrained Market Pricing (CMP) guidelines for coal shipped in markets where there was only one railroad. After more than 2-1/2 years of comment, the ICC adopted these final standard guidelines. Since the standard guidelines' adoption, the ICC and the Board have used the guidelines to evaluate the reasonableness of rates for noncoal shipments. The ICC Termination Act retained the basic statutory framework for rate reasonableness determinations but, as discussed below, directed the Board to complete the development of alternative, simplified guidelines for rate relief cases.

The CMP concept relies on railroads' setting rates in all markets according to their own estimates of demand—just as many firms set their own prices in other industries—but subjects rates on captive traffic to reasonable constraints. ICC believed that CMP allowed it both to assist railroads in attaining adequate revenues and protect shippers from monopolistic pricing practices. CMP provides for the following:

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<sup>2</sup>Ex Parte No. 627, Market Dominance Determinations: Product and Geographic Competition, Dec. 21, 1998.

<sup>3</sup>Demand-based differential pricing recognizes that railroads, in order to recover all of their costs, should be able to set rates in competitive markets below fully allocated costs to meet competitors' rates and to set other rates above fully allocated costs. Fully allocated costs is the sum of variable costs plus an apportionment of fixed costs (those that do not vary with quantity, such as land).

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Revenue adequacy: A captive shipper should not have to pay more than is necessary for the railroad to earn adequate revenues.<sup>4</sup>

Management efficiency: A captive shipper should not pay more than is necessary for efficient service.

Stand-alone cost: The rate should not exceed what a hypothetical efficient competitor would charge for providing comparable service; the shipper should not bear any costs from which it derives no benefit.

Phasing of rate increases: Changes in rates should not be so sudden as to cause severe economic dislocations.

Under the stand-alone cost approach routinely used in rate cases, a shipper develops a model of a hypothetical, optimally efficient railroad that could serve the complaining shipper. With the aid of a variety of experts, the shipper and railroad develop information regarding the hypothetical railroad's traffic, operating plan, capital investment requirements, costs, and revenues. If the hypothetical railroad's rate, including revenues sufficient to cover all costs and a reasonable profit, would be less than the rate the railroad charged the shipper, the Board will conclude that the challenged rate is unreasonable and may order the railroad to pay reparations on past shipments and prescribe rates for future shipments. Conversely, if the hypothetical railroad's rate would be greater than the challenged rate, the Board will conclude that the rate is reasonable and dismiss the complaint.

To reach its final decision, the Board typically employs a multidisciplinary team that includes a civil engineer to review the shipper's assumptions in building the hypothetical railroad, a transportation analyst to review the shipper's operational assumptions for the hypothetical railroad, and a financial analyst to prepare discounted cash flows. According to Board officials, the complexity of current rate cases and resource constraints on the Board allow the agency to work on two standard procedures cases concurrently at an average cost to the agency of \$270,000 per case for staff directly assigned to a given case.<sup>5</sup> According to shippers' associations, developing a model of a hypothetical railroad requires a shipper to hire numerous consultants at significant cost. Of the shippers that expressed

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<sup>4</sup>A captive shipper is one that can only use one railroad to ship its goods and has no other shipping alternatives.

<sup>5</sup>This amount also includes the costs associated with making the market-dominance determination.

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an opinion in our survey, an estimated 72 percent might not file a rate complaint because developing the model would be too costly.

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## **Too Early to Assess the Board's Actions to Ease Shippers' Burdens**

The ICC Termination Act of 1995 directed the Board to complete an ICC proceeding to develop a simplified alternative to the standard coal-rate guidelines within 1 year of enactment. While the Board adopted simplified guidelines in December 1996, no cases had been filed under the simplified procedures as of January 1999. In addition to the simplified guidelines, the Board has implemented other measures to reduce the barriers that shippers experience when bringing rate complaints. These measures include establishing procedural deadlines for standard cases as well as more limited deadlines for cases under the simplified guidelines and requiring the parties to discuss discovery matters at the beginning of the proceeding. Furthermore, the Board has eliminated the product- and geographic-based competition aspect of its market-dominance determination. The Board has also encouraged increased communication between the railroad and shipper communities so that they may better resolve their differences outside the regulatory process.

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## **The Board Has Adopted Alternative, Simplified Guidelines**

The Board's simplified guidelines are intended for complaints in which it would be too costly for the shipper to develop a cost model of a competitive railroad. Since 1986, the Board or its predecessor has attempted to develop simplified guidelines. According to Board officials, efforts to adopt the procedures have often been blocked by the courts. After the Board adopted the simplified guidelines in 1996, AAR challenged the simplified guidelines in federal court, contending that the guidelines did not fulfill the Congress's directive to establish a simple and expedited method to determine whether rates in small cases were reasonable. AAR asserted that the guidelines were "vague and could undermine the revenue adequacy of railroads." On June 30, 1998, the court found that the challenge to the simplified guidelines was premature because the Board had not yet applied them to invalidate a specific rate.<sup>6</sup> The shippers' representatives that we contacted expect that AAR will challenge the results of the first case in which the Board decides that a challenged rate is not reasonable under the simplified guidelines. These representatives contend that shippers may be reluctant to file a case under the simplified guidelines because they expect the results to be appealed and they would incur additional legal costs in subsequent litigation. In addition, they contend that if the court ruling invalidates the simplified guidelines,

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<sup>6</sup>Association of American Railroads v. Surface Transportation Board, 146 F. 3d 942 (D.C. Cir. 1998).



shippers would then have to decide whether to pursue complaints under the more complex standard guidelines. Nonetheless, Board officials noted that the Board would defend the simplification procedures in court and therefore believes that eligible shippers should not be deterred from their use because the procedures have not been judicially affirmed. Board officials expressed confidence that the courts would affirm the simplified procedures.

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**The Board Has  
Implemented Some  
Improvements to the Rate  
Complaint Process**

In addition to establishing simplified guidelines, the Board has implemented procedures designed to expedite the rate complaint process. For example, in September 1996, the Board issued a 7-month procedural schedule for complaints under the standard guidelines to ensure that the proceeding would be completed within 16 months. In January 1998, the Board issued expedited procedures for complaints brought under the simplified guidelines. These procedures established a 50-day schedule for the Board's determination as to whether simplified guidelines should be used in the complaint. Despite these efforts, the Board has either suspended or extended the proceedings for most of the shippers' complaints as a result of shippers' and railroads' requests. Furthermore, in an effort to speed up the process and develop realistic time frames, the parties confer with each other at the outset of a rate case to set the ground rules for the proceedings. During the conference, the parties identify and resolve disputes relating to discovery or the evidentiary schedule. Finally, the Board eliminated product- and geographic-based competition from its market-dominance analysis. While the Board had tried to mitigate problems associated with discovery pertaining to product and geographic competition proceedings, it concluded that such actions were not sufficient to address shippers' concerns. The railroads sought agency reconsideration of that decision.

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**The Board Has Promoted  
Communication Between  
Shippers and Railroads**

The Board prefers that shippers and railroads settle their differences without regulatory interference and has made various efforts to facilitate such agreements. The ICC Termination Act established the Railroad-Shipper Transportation Advisory Council to advise the Board, the Secretary of Transportation, and congressional oversight committees on rail transportation policy issues of particular interest to small shippers and small railroads. As a result of a proposal by the Council, the Board established a voluntary arbitration process as an alternative to traditional proceedings. The regulations establish a 120-day time frame for arbitration proceedings. Arbitrators' decisions are binding and judicially enforceable,

subject to a limited right of appeal to the Board. Arbitration has not been used as a substitute for a rate complaint. According to officials of the National Grain and Feed Association, arbitration is suitable for service problems, such as the misrouting of cars, but mediation is preferred to resolve rate complaints.

As a result of April 1998 hearings, the Board has encouraged further private-sector discussions to address access and competition issues. At the hearings, shippers called for a greater role for smaller railroads, particularly in rural areas. In September 1998, the American Short Line and Regional Railroad Association (ASLRRA) and AAR announced an agreement to improve service. The agreement provides for the arbitration of certain issues contested by class I and smaller railroads. However, the Board also mandated that the railroads and shippers establish a formal dialogue to address concerns raised during the April hearings. In response to the Board's directive, the National Grain and Feed Association and AAR entered into an agreement to address rate and service issues in the grain industry. The agreement provides for confidential, nonbinding mediation of certain rate disputes and mandatory binding arbitration of service disputes.

Other mechanisms to encourage discussions between the railroad and shipper communities include the National Grain Car Council and the Joint Grain Logistics Task Force. The ICC Termination Act directed the Board to consult as necessary with the National Grain Car Council, previously established by the ICC as a means for assisting the Board in addressing problems arising in transporting grain by rail. According to a Board official, the National Grain Car Council generally focuses on addressing issues for the grain industry as a whole, and not necessarily for individual shippers. The Board also established the Task Force in cooperation with the U. S. Department of Agriculture. The Task Force will address shippers' and railroads' information needs concerning recurring seasonal problems that affect the transportation of grain and grain products.

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## **Agency Comments and Our Evaluation**

In commenting on a draft of this report, Board officials stated we should provide more information on the complex task the Board faces in balancing competing policy objectives set forth under statute and the strides the Board has undertaken to streamline and simplify the rate complaint process. Officials stated that the standard complaint procedures that the Board currently uses for large cases resulted from many years of debate and judicial interpretations. These standard procedures address the

concerns that the Board must consider under the statute as it seeks to balance two competing goals: considering the needs of the railroad industry for adequate revenues while simultaneously ensuring that the industry does not exert an unfair advantage over captive shippers. Board officials noted that the agency has streamlined the standard process for handling large cases (such as modifying the market-dominance rule). However, they stated that the complexity of the standard procedures for larger rate cases is largely unavoidable, given the complexity of the underlying issues to be resolved and the need to balance competing policy objectives laid out by the Congress. Thus, officials contend that to further substantially reduce the complexity, time, and expense involved in handling these rate complaints would require legislative action.

Officials noted that the Congress could choose to adopt even simpler maximum rate formulas for certain traffic. However, officials continued, a substantial retreat from differential pricing principles could have a noticeable effect on the railroad industry's financial health and the type and scope of services provided and thus could affect the shippers that rely upon that industry to meet their transportation needs. Similarly, officials noted that the suggestions for increasing rail competition, such as through open access, would require substantial changes to the statute, could alter the shape and condition of the rail system, and limit the ability of the nation's rail system to meet the needs of some of the shippers that use the current system.

In response, we recognize that the Board faces competing policy objectives as a result of existing laws. These competing policies come to the forefront not just with rail rate complaints but with many other Board proceedings, such as actions to approve railroad mergers and consolidations. Throughout this report, we repeatedly cite the competing policies, embodied in statute, that the Board must employ in making its rail-related decisions. However, we have modified the report to reflect the Board's views that important aspects of the rate-relief process or the competitive structure of the railroad industry can only be changed with the support and approval of the Congress.

Board officials also stated that the report does not adequately address the simplified procedures. Officials stated that the new procedures were designed to provide a shorter, simpler, and less expensive means to address cases in which the more complex standard procedures are not cost effective. Board officials stated that the report, as well as our survey, generally focused on the standard rate complaint process—a process that

is inherently more complex and time-consuming. Board officials stated that the report does not adequately reflect the value that the new, simplified procedures could have for the shippers that will use them. Although shippers have complained that the simplified procedures are also complex, Board officials stated that the procedures are user-friendly and based on readily available and inexpensive data. Because the Board would defend the simplified procedures against railroad challenges in court, Board officials stated that eligible shippers should not be deterred from using them simply because the procedures have not yet been judicially affirmed. Officials expressed confidence that the courts would affirm the Board's simplified procedures, when they are applied.

In response, we note that since the Board issued its simplified procedures in December 1996, no shipper has asked the Board to review a rate complaint under them. As this chapter notes, shippers and their associations are reluctant to use the simplified procedures because they believe that AAR will challenge the first rate complaint filed under the new procedures. Shipper associations have noted that Board statements declaring the Board's intended defense of the simplified guidelines offer little encouragement for any shipper to be the first to file a complaint under these new procedures. While the new procedures offer shippers the prospect of resolving their complaints faster, the prospect of future litigation provides little incentive for shippers to initiate such a complaint. Accordingly, we believe that it is still too early to declare the simplified procedures a success.

# Decline in Complaints Filed, and Few Rates Have Been Found Unreasonable

Very few shippers served by class I railroads have complained to the Board or the ICC about the railroads' rates. After filing 130 rate complaints from 1980 through 1989, shippers filed only 24 rate complaints from 1990 through 1998. Furthermore, in the 41 complaints we reviewed that were filed or pending since the beginning of 1990,<sup>1</sup> the shipper and the railroad were able to settle their differences on 18 complaints before completing the formal complaint process. In addition, the challenged rates were found to be unreasonable in two cases, seven complaints were dismissed in favor of the railroad, and five were dismissed for other reasons. The Board is still examining the remaining nine complaints. Shippers of coal, farm products, and chemicals filed the greatest number of rate complaints. The rate complaint process was quite long for some shippers—time for resolution ranged from a few months to about 16 years.

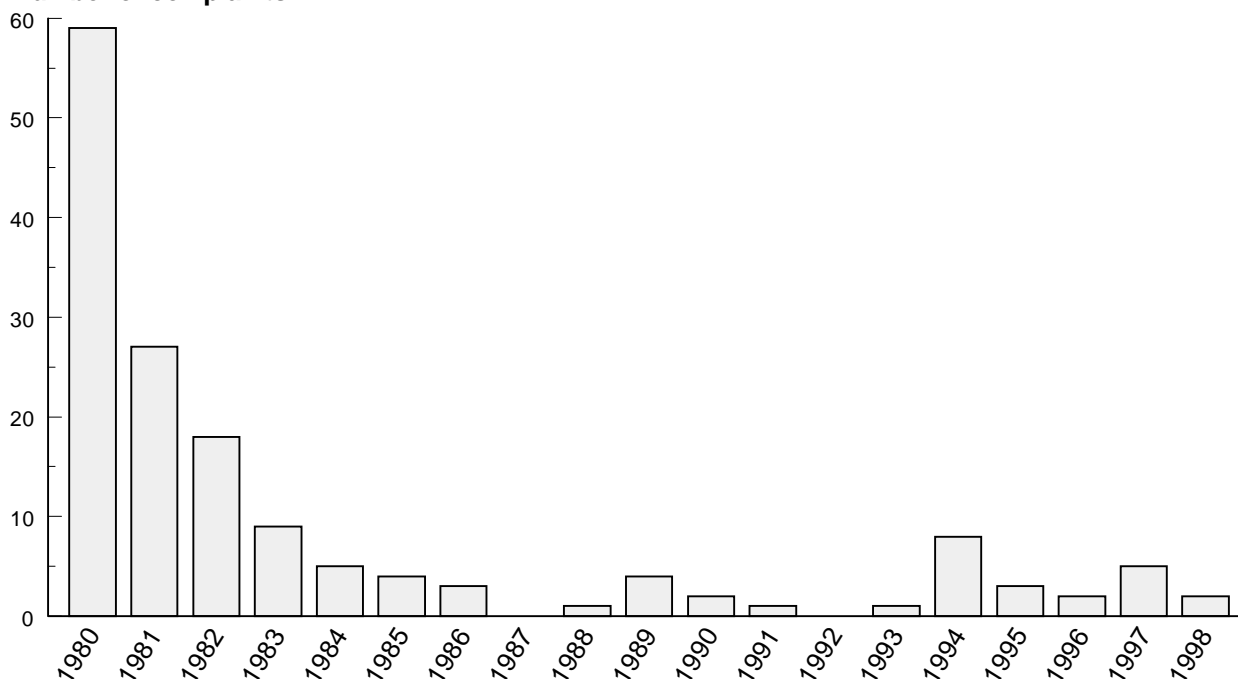
## Few Shippers Complained About Rail Rates

Despite the fact that thousands of shippers transport their products by rail, very few have filed complaints about rates to either the ICC or the Board over the past 20 years. From 1980 through 1989, the ICC received 130 rate complaints. The number of rate complaints has declined almost every year since 1980, and as figure 3.1 shows, two shippers filed rate complaints in 1998.<sup>2</sup>

<sup>1</sup>As of Jan. 1, 1990, 17 rate complaints were active with the Board's predecessor. Between Jan. 1, 1990 and Dec. 31, 1998, shippers filed 24 additional rate complaints with the Board or its predecessor.

<sup>2</sup>In 1981, shippers filed 864 rate complaints as a result of section 229 of the Staggers Act. This provision gave shippers 180 days from Oct. 1, 1980, to challenge railroad rates in existence on that date. Rates not challenged during this time period were presumed to be lawful and not subject to further challenge through the ICC or in court. We did not include these complaints in our analysis because we could not determine whether shippers would have filed these rate complaints in the absence of section 229 of the Staggers Act.

Figure 3.1: Rate Complaints Filed With ICC/Board, 1980-98  
Number of complaints



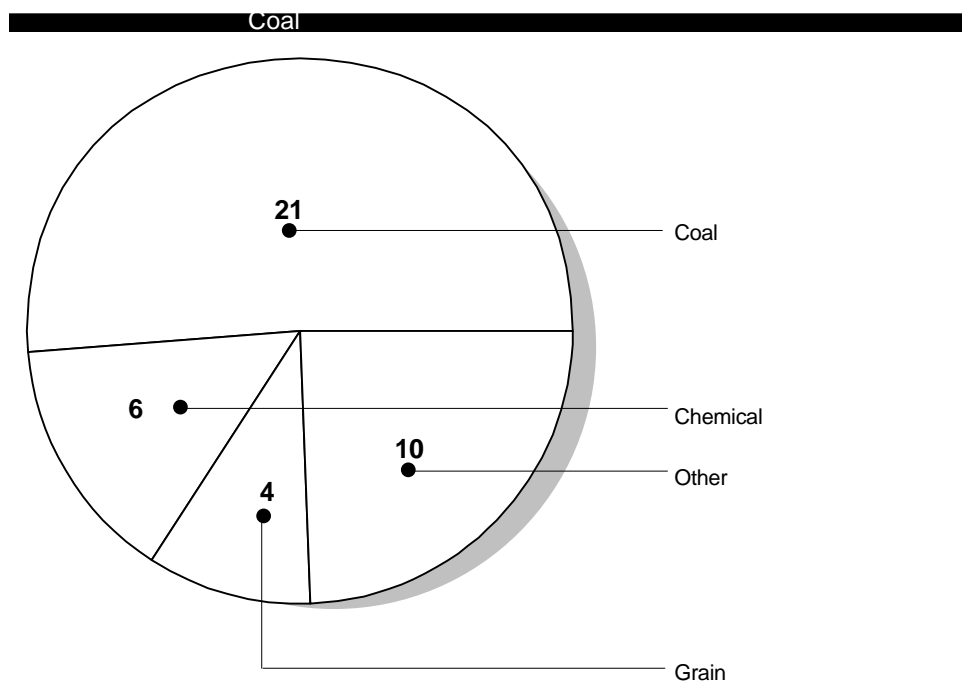
Source: Surface Transportation Board.

According to a Board official, the decline in the number of rate complaints filed may be attributed to the growth in the number of private transportation contracts between railroads and shippers, as well as a significant general decline in railroad rates over the past 10 to 15 years. However, some of the rail shippers that responded to our survey indicated that the complexity of the rate complaint process also had influenced their decisions not to file rate complaints. As a result of the Staggers Rail Act of 1980, railroads could establish rates through contracts with individual shippers rather than only through tariffs—predetermined rate schedules for particular routes—filed with the ICC. Contracts reflect negotiated agreements for rates and service levels tailored to the shippers' needs. A 1988 AAR survey found that 60 percent of all rail traffic was subject to private transportation contracts between the shippers and the railroads. By 1997, AAR found that the amount of rail traffic subject to a contract had

increased to 70 percent. In addition, according to the Board, the average inflation-adjusted class I railroad rate steadily declined 46 percent from 1982 through 1996, perhaps also leading to a decline in the number of rate complaints. Of the 709 shippers that responded to our survey, 25 percent indicated that they found their freight rates reasonable and therefore found no reason to file a complaint. However, an estimated 75 percent of the remaining rail shippers that responded to our survey indicated that administrative and legal barriers in the rate complaint process may have precluded them from filing a complaint.

Since 1990, 41 complaints have either been filed with or are pending before the ICC/Board. Shippers of bulk commodities like coal, grain and chemicals are highly dependent on rail for their transportation needs and filed the most rate complaints. Coal, grain, and chemical shipments constituted about 60 percent of total traffic on class I railroads in 1997, and accounted for 76 percent (31) of the complaints either pending or filed since January 1, 1990. Coal shippers alone filed 21 of the 41 complaints, as shown in figure 3.2.

**Figure 3.2: 41 Complaints Pending or Filed Since January 1, 1990, by Commodity**



Source: GAO's analysis of the Board's information.

The six chemical and four grain complaints represented 24 percent of the complaints either pending or filed since 1990. Commodities other than coal, grain, and chemicals identified in these complaints include corn syrup, sugar, pulpwood and woodchips, electric transformers, spent nuclear fuel, railroad cars, and perlite rock. Appendix II contains a list of the commodities associated with each complaint. Board officials believe that the number of rate complaints from coal shippers will increase partly because many long-term private transportation contracts between railroads and utility companies are expiring and there may be disputes regarding rates in the absence of contracts. According to the Board, coal shippers have the most incentive for bringing a rate complaint because of the large amount of dollars potentially in dispute. For example, in 1998, the Board awarded the Arizona Public Service Company and PacifiCorp over \$23 million plus interest in their joint complaint against the Atchison, Topeka, and Santa Fe Railway Company. In addition, the stand-alone cost model is relatively less complicated to apply to coal shipments than it is to other commodities, such as chemicals. Railroads usually transport coal shipments between few origins and destinations—mainly between the coal mine and the utility company’s generating plant—over a limited segment of a railroad’s system. Chemical shippers, on the other hand, typically send smaller shipments to many destinations. However, officials from the Western Coal Traffic League stressed that bringing a rate complaint to the Board is the last resort for a utility company because in addition to the extremely high cost of bringing a rate complaint, the effort distracts from and disrupts the company’s everyday operations.

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## **Resolving Rate Cases Can Take Considerable Time**

The resolution of rate complaint cases has often taken a number of years under the standard guidelines. In some instances, complaints were prolonged because either the railroad or the shipper appealed an ICC/Board decision to a federal court, which subsequently remanded the complaint to the agency for another review. Since 1990, the ICC/Board has completed 32 rate complaint cases. As table 3.1 shows, some complaints were resolved in a few months, while others took more than 16 years. According to the Board, some cases were lengthy because the standards were not in place when the cases were filed and/or because of extensive litigation.



**Chapter 3**  
**Decline in Complaints Filed, and Few Rates**  
**Have Been Found Unreasonable**

**Table 3.1: Resolution of Rate Reasonableness Decisions, 1990-98**

Commodity	Number of complaints	Range of time for complaint resolution (years)	Average time for final decision (years)	
			Per complaint	Per case
Coal	18 <sup>a</sup>	0.3 - 16.1	4.8	3.9
Chemicals	4	0.7 - 2.7	1.5	1.5
Grain	3 <sup>b</sup>	15.1 - 16.4	16.0	16.4
Other	7	0.2 - 15.2	8.4	8.4
Pending complaints	9	Not applicable	Not applicable	Not applicable
Total	41	0.2 - 16.4	6.3	5.1

<sup>a</sup>ICC consolidated Increased Rates on Coal, Louisville and Nashville Railroad and Dayton Power and Light Co. v. Louisville and Nashville Railroad into a single proceeding. ICC also consolidated Bituminous Coal, Hiawatha, Utah to Moapa, Nevada and Aggregate Volume Rate on Coal, Acco, Utah to Moapa, Nevada into a single proceeding.

<sup>b</sup>ICC consolidated these three grain complaints into a single proceeding—McCarty Farms v. Burlington Northern, Inc.

Source: GAO's analysis of the Board's information.

The time required for resolving a complaint varied by commodity. Three complaints filed by grain shippers, which were combined into a single proceeding, McCarty Farms, Inc. et al. v. Burlington Northern, Inc., took about 16 years to resolve. According to Board officials, this is principally because the complaints were filed before the ICC had developed rate standards and because the parties challenged various ICC and Board decisions in court. In 1980, about 10,000 Montana farmers and owners of grain elevators (the McCarty Farms Group) filed a class action lawsuit against the railroad in federal district court, challenging Burlington Northern's rates on wheat shipped from Montana to Oregon and Washington State. After numerous reviews by the agency and the courts, the Board found the rates not to be unreasonable in August 1997 and discontinued the proceedings. In October, 1997, the McCarty Farms Group appealed the Board's decision to the U.S. Court of Appeals for the District of Columbia Circuit. In October 1998, the court upheld the Board's decision that the rates were not unreasonable.<sup>3</sup> (See app. I for a more detailed description of the McCarty Farms case.)

<sup>3</sup>McCarty Farms, Inc. et al. v. Surface Transportation Board, 158 F. 3d 1294 (D.C. Cir. 1998). The court held that it did not have jurisdiction over claims that were initially raised by the McCarty Farms Group's complaint in federal district court and subsequently referred to the ICC. Accordingly, the court did not rule on the Board's decision as it pertained to those claims. The district court has since dismissed its portion of the case at the request of the parties.

Coal and chemical complaints have generally been resolved more quickly; average reviews have taken about 5 and 2 years respectively. However, the ICC/Board dismissed some of these complaints in less than 12 months.<sup>4</sup> For example, the Board dismissed one coal complaint—Omaha Public Power District v. Union Pacific Railroad Company—after 4 months. Two of the nine pending cases—all concerning disputes over the same traffic—have been active for over 16 years. The Department of Energy and the Department of Defense filed complaints against various railroads in 1978 and 1981 regarding the transportation of spent nuclear fuel. The ICC found that the railroads' practice of requiring special trains to handle this material was unreasonable. On appeal, the court held that the agency must rule on the rate levels instead. The Board told the parties that it will not resolve these cases until it receives information on their progress in settling the dispute. If the information provided shows that there is little or no prospect that the parties will resolve these complaints, the Board will move the case forward. (See app. II for a complete list of the complaints pending with the Board.) Of the complaints we reviewed, those filed after January 1, 1990, were generally completed more quickly.

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## **Few Cases Complete the Rate Complaint Process**

Many complaints filed or pending since January 1990 did not complete the entire rate complaint process. Eighteen of the 41 cases we reviewed did not complete the rate complaint process. In these cases, the shippers reached agreements with the railroads and requested that the ICC/Board dismiss the complaint. The ICC/Board dismissed many complaints in the early phases of the rate complaint process without rendering a decision regarding whether the rates were reasonable. Ten of the 41 complaints reached the rate-reasonableness phase of the process. In two cases, the rates were found to be unreasonable, and in six cases, they were found to be reasonable. While the ICC or the Board considered rate reasonableness in the remaining two cases, the complaints were not ultimately resolved on this basis but were dismissed at the request of the shippers.

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## **Shippers and Railroads Negotiated Settlements Outside the Rate Complaint Process**

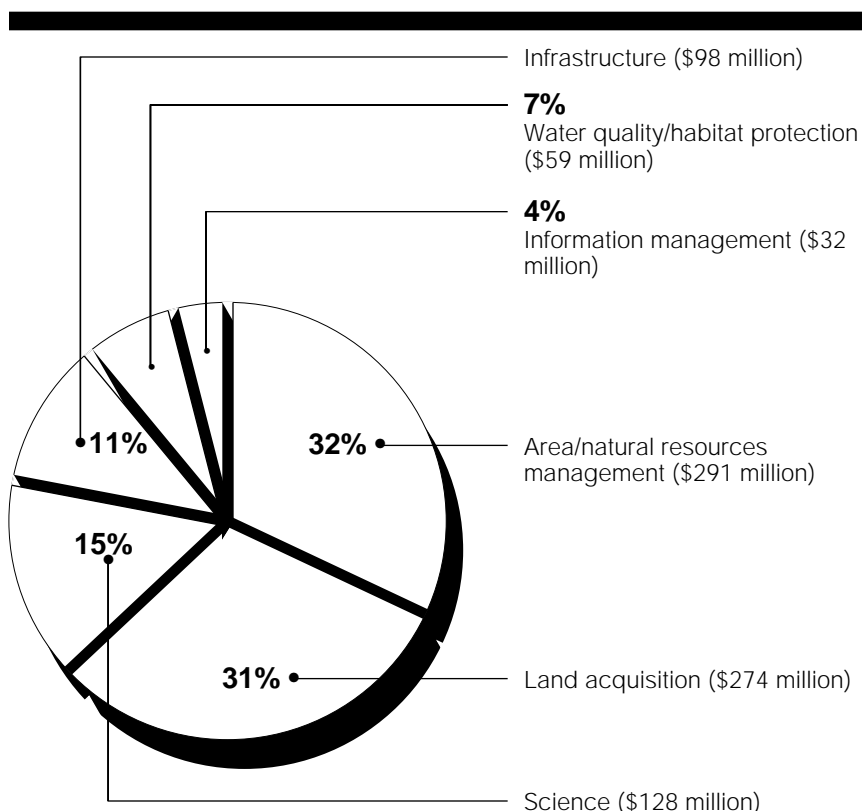
Often, a shipper files a rate complaint with the ICC/Board after the shipper and railroad have tried to negotiate terms for rail rates and service. According to Western Coal Traffic League officials, shippers initially use the leverage of possible or actual outside competition and negotiations to obtain favorable rates. If this does not work, the shipper's last opportunity to try and obtain lower rates is to file a complaint. The ICC/Board

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<sup>4</sup>The ICC and the Board dismissed the four chemical complaints either because the shipper and railroad resolved the dispute outside of the rate complaint process or for lack of jurisdiction over the disputed rate.

dismissed 18 of the 41 complaints because the shipper and railroad reached a settlement. (See fig. 3.3)

**Figure 3.3: Status of 41 Rate Complaints, as of December 31, 1998**



Source: GAO's analysis of the Board's information.

In some instances, the shippers requested that the Board dismiss the complaint because they had resolved their differences and entered into a transportation contract with the railroad. Board officials stated that in this instance they view a dismissal as a success because the parties were able to settle their differences. According to a Board official, however, the shippers are not required to provide details of any agreement or settlement they may reach with the railroad in requesting dismissal. Therefore, we were only able to determine that five of these dismissals were most likely

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due to private transportation contracts. (See table II.1 in app. II for a full list of complaints that the ICC/Board dismissed at the shipper's request.)

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## **Outcome of Nonnegotiated Complaints**

In two cases, the Board found the railroads' rates to be unreasonable and awarded the shippers reparations. The Board is still examining nine rate cases. In other cases, the Board found that relief was not appropriate under the law. The ICC/Board dismissed seven complaints in favor of the railroad because the railroad was not market dominant or because the rates were reasonable. The ICC/Board dismissed five complaints primarily because the rate was either subject to a contract or the remedy that the shipper wanted was not available. (See tables II.2 through II.5 in app. II for a complete list of these complaints.)

In one case in which the Board found the rates unreasonable, Arizona Public Service Company and PacifiCorp (jointly, Arizona) had filed a complaint with the ICC challenging the Atchison, Topeka, and Santa Fe's rates for transporting coal from New Mexico to Arizona for electric power generation. The railroad asserted that it faced a hybrid form of product and geographic competition because the electric utility—Arizona—could produce power or purchase power elsewhere on the nation's electric power grid. However, the Board disagreed, citing significant costs and barriers to Arizona's obtaining substitute power and found that the revenues produced by the railroad's rates exceeded the revenues that would be required by Arizona's hypothetical railroad. The Board awarded the utility more than \$23 million plus interest and prescribed future rates. In the second case, West Texas Utilities Company filed a complaint with the ICC challenging Burlington Northern's rates for transporting coal from Wyoming to Texas. In this case, the railroad also alleged that it faced a hybrid form of product and geographic competition because the electric utility could either produce or purchase power elsewhere. The Board disagreed and found that Burlington Northern dominated the market with respect to the coal shipments at issue. The Board found the rates unreasonable and awarded West Texas more than \$11 million plus interest.

The Board is currently reviewing nine rate complaints, including three filed by the Department of Energy and the Department of Defense against the numerous railroads that transport spent nuclear fuel. While these complaints involve the same traffic, the Board has not officially consolidated these three complaints into a single proceeding. The Board is also considering three complaints filed by electric utility companies for

the transport of coal, one complaint regarding the transport of grain, and two chemicals complaints. (See table II.5 in app. II for a complete list of these complaints.)

**Many Complaints Ended During Early Phases of the Rate Complaint Process**

Many of the complaints did not go through the entire rate complaint process. These complaints usually ended after reaching the discovery phase (where the railroad and shipper disclose information) or the evidentiary phase (where the railroad and shipper file evidence with the Board). As table 3.2 demonstrates, the ICC/Board dismissed 14 complaints during or prior to the evidentiary phase and 2 complaints during the evidentiary phase.

**Table 3.2: Phase in Which the Parties Settled or the ICC/Board Dismissed Complaint**

<b>Rate reasonableness phases</b>	<b>Number of complaints dismissed during phase</b>
Settled or dismissed before submission of evidence	12
Settled or dismissed during evidentiary phase	2
Settled or dismissed after evidentiary record closes	2
Settled or dismissed after market-dominance determination	7
Settled or dismissed during or after rate reasonableness determination	8
Rate relief granted	2
Other pending complaints	9
<b>Total</b>	<b>42<sup>a</sup></b>

<sup>a</sup>The table totals 42 because the Board dismissed a complaint for one of four shippers involved in a case after the market-dominance determination. The Board dismissed the complaint for the other three shippers after they had made tentative rate-reasonableness findings.

Source: GAO's analysis of the Board's information.

Seventeen of the 41 complaints were active after the ICC/Board closed the evidentiary record. Of these complaints, the ICC/Board dismissed seven after it had examined market dominance and eight during or after a review of the reasonableness of the rates. The ICC/Board found that the rates in six of these eight cases were reasonable; the other two complaints were ultimately dismissed at the shippers' requests. In two cases, the Board found rates to be unreasonable and awarded reparations to Arizona Public Service and PacifiCorp (jointly, Arizona) and West Texas Utilities.

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## **Agency Comments and Our Evaluation**

In commenting on a draft of this report, the Board indicated that additional factors beyond those cited in this chapter can affect the time required to complete a rate complaint. The Board noted that some cases were protracted for two important reasons: The rate complaints were filed before the Board's predecessor had developed rate standards and/or the parties took various Board decisions to court. Delays in deciding rate cases in the 1980s, for example, were a transitional problem resulting from the process of developing and interpreting rate reasonableness standards. The Board noted that cases initiated in the 1990s were handled significantly faster. In addition, the Board concluded that our approach of counting consolidated rate complaints separately overstated the average time required to resolve rate complaints and suggested that we also include an analysis of what the average time would be to resolve the cases separately.

We agree with the Board's comments and added information in this chapter to reflect the other factors that can affect the time required to complete a rate complaint case. We have also added information on the average time to complete a rate complaint on the basis of the separate cases.

# Barriers to the Rate Complaint Process and Possible Solutions

In response to our survey of shippers and discussions with commodity shipping associations, shippers cited several reasons for not using the standard rate complaint process but particularly emphasized its time, cost, and complexity. Shippers suggested methods to simplify the filing process and thereby reduce the time and costs involved. Furthermore, they indicated that increasing competition in the railroad industry would lower freight rates and diminish the need to file rate complaints. In response to our survey, the nine class I railroads stated that maintaining the current regulatory environment is crucial to retaining and improving the financial stability of the railroad industry. They stated that the current process for deciding rate complaints, while not perfect, is an appropriate system in the current regulatory environment. Furthermore, the railroads contend that adequate competition currently exists and that their ability to determine freight rates in a competitive market is key to the railroad industry's financial stability.

## Time, Cost, and Complexity Keep Shippers From Filing Rate Complaints

On the basis of our survey responses, we estimate that 25 percent of the rail shippers consider their rates to be reasonable. Our survey responses suggest that the remaining 75 percent believe that their rates were unreasonable and that barriers kept them from filing a complaint under the standard procedures.<sup>1</sup> These shippers found the rate complaint process to be time-consuming, costly, and complex. They cited the legal costs associated with filing a complaint, the complexity of the process, the time involved in seeking relief, and the overall costs associated with developing their cases as the most significant barriers to seeking relief with the Board.

During our interviews with shipping association officials, they highlighted several potential barriers that could keep shippers from filing complaints under the standard procedures. On the basis of our questionnaire responses, we estimate that 178 shippers (25 percent) of the 709 shippers that use rail consider their freight shipping rates to be reasonable and therefore had no reason to file a complaint. We asked the remaining 531 shippers (75 percent) to indicate whether the barriers that the shipping associations had highlighted were a reason for not filing a rate complaint.<sup>2</sup> Table 4.1 shows the barriers we presented to these shippers and the

<sup>1</sup>Our survey did not differentiate between the standard and simplified rate processes. Some questions concerning possible barriers and improvements to the current rate process focused on the standard process. No cases have been filed under the simplified procedures.

<sup>2</sup>Those that did not consider their rates to be reasonable were (by commodity) grain (74 percent), coal (83 percent), and chemicals and plastics (70 percent).

**Chapter 4**  
**Barriers to the Rate Complaint Process and**  
**Possible Solutions**

percent of the 531 shippers that found the barriers to be a major or moderate reason for not filing a rate complaint.

**Table 4.1: Percentage of Rail Shippers Responding That a Barrier Was a Major or Moderate Reason for Not Filing a Rate Complaint**

<b>Barrier</b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Total<sup>a</sup></b>
Legal costs associated with filing complaints outweigh the benefits	78	65	76	76
The rate complaint process is too complex	78	73	75	76
Rate complaint process takes too long	74	86	64	74
Developing the stand alone-cost model is too costly	72	76	64	72
The STB will most likely decide on behalf of the railroads, so it is not worth our effort to file a complaint	69	81	61	69
Too hard to get necessary data from railroads (discovery process)	69	67	55	67
Consulting costs (other than legal) associated with filing complaints are too high	68	55	64	66
Responding to railroad requests for data is difficult and time consuming	68	59	63	66
Fear of reprisal from railroads	64	55	44	60

(continued)



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**Chapter 4**  
**Barriers to the Rate Complaint Process and**  
**Possible Solutions**

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<b>Barrier</b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Total<sup>a</sup></b>
The STB filing fee is cost prohibitive	62	44	42	57
Other parts of the complaint process are too costly	40	28	41	39

Note: Each percentage represents rail shippers who expressed an opinion regarding a particular barrier. Some shippers did not express an opinion for some barriers. App. III lists the sampling error and the number of missing or "Don't Know" responses associated with these estimates.

Source: GAO's survey of railroad shippers.

While rail shippers found most of the barriers cited in our survey to be significant, they found some to be more significant than others.<sup>3</sup> Generally, shippers found cost, complexity, and time to be significant barriers that kept them from filing standard rate complaints. Seven out of 10 shippers responding to our survey cited the following reasons as important barriers to filing a complaint: the legal costs for filing a complaint, the costs associated with developing a stand-alone cost model, the length of the rate complaint process, and the overall complexity of the process. In addition, 6 out of 10 shippers responding indicated that high consulting costs, the difficulties of the discovery process, the high level of the filing fee, or fear that railroads might retaliate against them were important reasons for not filing rate complaints under the standard process.

The barriers most significant to shippers as a whole are not necessarily the most significant barriers for shippers in each commodity group. Shippers of specific commodities (grain, coal, chemicals, and plastics) have unique characteristics that may have affected their responses. For example, coal shippers make very large, routine shipments throughout the course of the year and often have few alternatives to using rail; thus, rail shipping costs are a significant portion of their total shipping costs. Coal shippers believed that the most significant barrier is the time involved in filing a complaint. This is because coal shippers would have to continue to pay the disputed rate over the length of the rate complaint process. However, they can obtain reparations plus interest if the rate is found to be unreasonable. Grain shippers cited legal costs as the most significant barrier. Grain

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<sup>3</sup>Our analysis did not seek to rank the importance of each barrier but rather to show the relative significance to shippers. While a distinction can be drawn between the responses by commodity, one cannot be drawn between barriers because of the similarity in responses and the sampling error associated with each response.

shippers make the highest volume of their shipments during the harvest season and generally have more transportation options available to them. As a result, they spend relatively less on rail shipping, and therefore the costs of a complaint may offset or exceed the potential benefits of filing.

The shippers' concerns identified in our survey are similar to those we found in 1987, when we examined the rate complaint process and contacted shippers that had filed complaints with the ICC.<sup>4</sup> At that time, we found that shippers were generally dissatisfied with the rate complaint process. Shippers were concerned about the complexity of the stand-alone cost model, the costs and time involved in adjudicating a rate complaint, the lack of clear criteria for determining rate reasonableness, and fear that railroads would most likely win any rate complaint case. Of the shippers we contacted in 1987 that used the process, 53 percent indicated that they would probably use the complaint process again if they believed their rates to be unreasonable. This compares to 68 percent of rail shippers in our 1998 survey who responded that they would probably or definitely use the rate complaint process again. This could indicate that, while some shippers are dissatisfied with the rate relief process, they may recognize it as their only alternative for seeking relief from unreasonable rates. Board officials provided an alternative interpretation of the results. They stated that shippers may recognize that the process has been improved and that it provides a clear basis for leverage in negotiating private contracts or obtaining relief from unreasonable rates.

Railroads disagree with shippers about the extent to which the rate complaint process is burdensome. In responding for the class I railroads, AAR stated that it understood that the rate complaint process can be difficult for shippers and noted that barriers should not be an obstacle for seeking rate relief. AAR and its member railroads stated that while they believed that the process was generally suitable for determining rate reasonableness, they would not object to the Board adopting more efficient procedures for rate complaint cases. The railroads, however, want the standard for determining market dominance to remain. This is generally the same position that the railroads held in 1987, when AAR officials stated that the railroads were generally satisfied with the standard rate complaint process and viewed the criteria for jurisdictional threshold, market dominance, and rate reasonableness as clear. In our discussions at that time, railroad officials said they found the process suitable for adjudicating larger rate complaints. However, representatives from five of

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<sup>4</sup>Railroad Regulation: Shipper Experiences and Current Issues in ICC Regulation of Rail Rates (GAO/RCED-87-119, Sept. 9, 1987).

the eight railroads we contacted stated that contract negotiations, rather than the potential for being involved in litigation over published rates, was the preferred method of setting rates. One railroad official noted that it was not in the railroad's interest to charge a rate that a shipper would challenge and that contract rates were preferred for their predictability and stability.

The Board has conducted hearings to identify barriers to the rate relief process. On April 17, 1998, the Board instituted a forum for shippers and railroads to voice their opinions on a variety of rail access and competition issues. Board officials generally support any action that reduces barriers while maintaining the integrity of the process. The Board asked railroads and shipper groups to work together to find solutions outside of the regulatory framework—an environment that the Board contends is a better framework to resolve private-sector disputes. In addition, the Board eliminated product and geographic competition from its market-dominance analysis. The railroads have filed a petition requesting for the Board's reconsideration of its decision.

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## Challenges in Improving the Rate Complaint Process

In our discussions with shippers' associations and AAR officials, we identified potential options for addressing shippers' concerns about the rate complaint process. In our surveys, we asked shippers and railroads to rate methods that would improve the rate complaint process and address shippers' concerns. In response to options for improving the rate complaint process, shippers supported methods to simplify and accelerate the process and reduce the costs they incur when filing rate complaints. The class I railroads contend that the current rate complaint process is well suited to determining rate reasonableness in larger cases and therefore saw no need for substantive changes to the standard process. Board officials stated that in trying to improve the rate complaint process, they must balance the needs of shippers seeking relief from unreasonable rates with the railroads' need for adequate revenues to continue operating.

We estimate that nearly 64 percent of the 709 rail shippers believed that the standard rate complaint process should be changed to a very great or great extent and over 86 percent believed that the process should be changed to at least a moderate extent. Our survey asked the 709 rail shippers to identify what changes should be made to the rate complaint process to make it more useful to them. Table 4.2 lists the options we presented to shippers for improving the rate complaint process. The percentages, for all shippers and by commodity group, indicate the

proportion of shippers that indicated that the options were either extremely or very important.

**Table 4.2: Percentage of Rail Shippers Responding That Options for Improving the Rate Complaint Process Were Extremely to Very Important**

<b>Suggestions for improving the rate complaint process</b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Total</b>
Shorten STB's time limits for deciding rate relief cases (currently, the guideline is no more than 16 months)	76	77	73	76
Reduce or eliminate the complaint fees that shippers must pay in order to file a complaint with the STB	68	42	56	63
Simplify the STB requirement to prove market dominance by eliminating the product and/or geographic competition criteria <sup>a</sup>	57	82	63	62
Use mandatory binding arbitration between shippers and railroads to resolve rate disputes	67	30	41	58
Lower STB's jurisdictional threshold from the current level of 180 percent of revenue-to-variable cost	51	67	47	53

(continued)

<b>Suggestions for improving the rate complaint process</b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Total</b>
Increase the use of voluntary binding arbitration between shippers and railroads to resolve rate disputes	58	30	37	52
Use mandatory arbitration with nonbinding results	20	5	8	16

Note: Each percentage represents rail shippers that expressed an opinion regarding a particular suggestion. Some shippers did not express an opinion for some suggestions. There is a sampling error associated with these estimates. App. III lists the sampling error and the number of missing or "Don't Know" responses associated with these estimates.

<sup>a</sup>The Board eliminated product and geographic competition after shippers responded to the survey.

Source: GAO's survey of railroad shippers.

Table 4.2 shows that reducing the time involved in filing and deciding a case is generally most important to shippers. In general, the options most favored by shippers relate directly to reducing the time involved in case decisions, reducing the costs involved in filing a complaint, and eliminating product and geographic competition criteria. According to Board officials, some of the options presented in table 4.2 are beyond the Board's ability to implement.

## Shortening the Time to Decide Rate Complaints

We estimate that about 76 percent of rail shippers believed that shortening the time involved in filing and completing a complaint would improve the rate complaint process. Although a shipper would obtain reparations, with interest, for rates paid during the complaint process if the rate is eventually found to be unreasonable, the shipper must continue to pay the higher rate until the case is resolved.

The railroads recognize that the standard rate complaint process takes time and agree that the Board should pursue changes to shorten the time involved and reduce the barriers that shippers face. The railroads did not

make any specific recommendations to address timeliness. They said that they stand ready to work with shippers and the Board to reduce the barriers inherent in the process but seek to maintain the process's effectiveness. While the railroads recognize shippers' concerns, they contend that the Board's process is well suited to determining rate reasonableness.

The shippers' concerns about the timeliness of the rate complaint process may partly be due to the ICC's and the Board's experience with rate complaint cases filed or pending since 1990. As discussed earlier, the elapsed time for such cases ranged from a few months to about 16 years. This historical record may have affected shippers' calls for faster rate complaint decisions. The Board has established an expedited procedural schedule designed to ensure that cases under the standard guidelines are completed within 16 months. As of January 1999, no cases had been decided under the expedited procedural schedule.

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## **Reducing or Eliminating the Board's Complaint Fees**

The current filing fee for complaints filed under the standard guidelines is \$54,500.<sup>5</sup> The fee is substantially less for cases under the simplified guidelines (\$5,400).<sup>6</sup> We estimate that about 63 percent of the rail shippers believe that reducing or eliminating the Board's filing fee is an important step toward improving the rate complaint process. While a majority of grain, chemical and plastics shippers concurred in this suggestion, we estimate that only 42 percent of coal shippers cited the need to eliminate the fee. The \$54,500 filing fee may not be a determining factor in large coal complaint cases where the reparations sought are measured in millions of dollars. However, it can present a barrier to small grain shippers whose rail shipping costs constitute a smaller portion of their total shipping costs and where the damages sought are much lower.

The class I railroads did not express an opinion regarding the Board's filing fee. In a 1996 decision, the Board noted that it was sympathetic to shippers' concerns that increasing the filing fee could impede the filing of complaints.<sup>7</sup> In an effort intended to lessen the burden of the fees, the Board tentatively set the complaint filing fee at 10 percent of the full cost

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<sup>5</sup>The Board established this filing fee under the governing statute and Office of Management and Budget guidelines.

<sup>6</sup>At the time we surveyed the shippers, the filing fee was \$27,000 for the cases under the standard guidelines and \$2,600 for the cases under the simplified guidelines.

<sup>7</sup>Ex Parte 542, Regulations Governing Fees for Service Performed in Connection With Licensing and Related Services (Aug. 14, 1996).

of adjudicating a complaint and proposed increasing the fee 10 percent annually until the fully allocated cost level was achieved. In 1998, the Board chose to increase the fee in proportion to increases in its costs rather than by the annual 10-percent adjustment. A report by DOT's Office of Inspector General recommended that the Board either annually increase the fee to recover the full cost of complaint adjudication or convene a new proceeding to determine whether such increases are feasible and warranted.<sup>8</sup> In February 1999, the Board updated its fee schedule and adjusted its complaint filing fees. As a result, the fee for filing a standard rate complaint increased from \$27,000 to \$54,500. The new fee represents 20 percent of the Board's fully allocated costs.

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### **Simplifying or Eliminating Product and Geographic Competition Criteria**

According to our survey responses, an estimated 62 percent of the rail shippers believed that eliminating the product and geographic competition criteria would improve the rate complaint process. During discovery, railroads request operating information from shippers in order to prove the existence of product and geographic competition. However, shippers stated that railroads use these discovery requests to delay the process. In a recent rate complaint case, *FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Co.*, the Board agreed with the shippers' contention. In addition, in December 1998, the Board issued a decision revising its procedures for market-dominance determinations and eliminated the consideration of product and geographic competition. However, the railroads filed a petition for reconsideration of the petition.

In comments submitted for the Board's proceeding on product and geographic competition, the National Industrial Transportation League<sup>9</sup> noted that the consideration of product and geographic competition unduly complicated the Board's market-dominance determination. The League assembled and analyzed the disclosure requests that railroads served on the complaining shippers in seven rate cases. On the basis of its analysis, the League found that railroads submitted hundreds of questions to the shippers that required hundreds of hours of effort by lawyers, consultants, and staff. In addition, many of the questions asked for multiple pieces of information and thus complicated the shippers' efforts to answer the questions. The League contended that market-dominance

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<sup>8</sup>Report on Surface Transportation Board's User Fees, U.S. Department of Transportation, Office of Inspector General (CE-1999-021, Nov. 17, 1998).

<sup>9</sup>The National Industrial Transportation League is a voluntary organization of shippers and groups and associations of shippers conducting industrial and/or commercial enterprises in the United States.

discovery of this magnitude constituted a formidable barrier for the shippers.

The railroads contended that, in order for them to successfully challenge a complaint, product and geographic competition tests are crucial to showing that sufficient alternatives exist for the shipper. The railroads acknowledged that the product and geographic competition criteria can make it unduly burdensome to litigate rate reasonableness cases before the Board.<sup>10</sup> They contended that a core premise of the economics of competition is that market power can be constrained by a range of competitive forces, including product and geographic competition. The railroads agreed, however, that procedural obstacles and the cost of litigation should not be barriers to obtaining regulatory relief when such relief is warranted. After considering both the shippers' and railroads' perspectives, the Board eliminated product and geographic competition criteria from market-dominance determinations. The Board is now in the process of reviewing the railroads' petition for reconsideration.

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## Using Arbitration and Mediation

We estimate that from 52 to 58 percent of the rail shippers we surveyed support certain types of arbitration as an alternative to bringing a complaint before the Board. Our estimates show that 58 percent of the rail shippers supported mandatory binding arbitration; 52 percent favored voluntary arbitration; and 16 percent supported voluntary arbitration with nonbinding results. Shippers' support for arbitration as an alternative to the rate complaint process not only differed by the type of arbitration proposed but by the type of commodity shipped. Grain shippers generally favored arbitration more than coal, chemicals, and plastics shippers. In October 1998, the National Grain and Feed Association's (NGFA) signed an agreement with the class I railroads to submit certain disputes to mandatory, binding arbitration. While rate disputes are excluded from the mandatory aspect of the agreement, they can be mediated on a voluntary basis.

AAR officials point to the NGFA arbitration agreement as evidence that the railroads are willing to work with shippers to address their concerns. Furthermore, the officials added, the agreement is a solution that addresses shippers' concerns outside of the regulatory framework—at the Board's request. As a result of April 1998 hearings, the Board asked shippers and railroads to work together to recommend solutions that

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<sup>10</sup>The Surface Transportation Board Ex Parte No. 627, Market-dominance Determinations: Product and Geographic Competition.



would improve the existing process. The railroads cite the arbitration agreement as evidence that they are seeking to address shippers' concerns. Board officials generally support any settlement agreements between shippers and railroads that reduce the burdens that shippers face resulting from the rate complaint process.

It is too early to tell whether the use of mediation to resolve rate disputes between shippers and their railroads will have a positive impact. As of November 1998, no rate disputes had been mediated under the process. Furthermore, the mediation agreement only extends to NGFA members, not to nonmembers and shippers of other commodities. The mediation process, if successful, could reduce the number of complaints. Board officials note that railroads and shippers currently have the option of agreeing to voluntary mediation or voluntary arbitration of a dispute. Thus, no regulatory or legislative action is required to use such alternative dispute resolution procedures. In addition, Board officials do not believe it has the authority to require mandatory (nonconsensual) arbitration.

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### **Lowering the Board's Jurisdictional Threshold**

Some shippers suggested that the Board's current statutory jurisdictional threshold for rate reasonableness complaints is too high and that a rate that is below 180 percent of a railroad's variable cost of transporting the traffic can still be unreasonable. We estimate that about 53 percent of the rail shippers believed that lowering the statutory threshold for determining Board jurisdiction would improve the rate complaint process. Of those who suggested a different jurisdictional threshold, the average suggested threshold was 118 percent, while the most common suggestion was 100 percent. However, because of the large percentage of shippers that did not answer the question, few conclusions about the jurisdictional threshold can be drawn.

AAR stated that the current revenue-to-variable-cost ratio of 180 percent is an effective and appropriate level for a jurisdictional threshold. One AAR official stated that 180 percent, on average, was not significantly greater than the breakeven point for all railroad traffic. AAR cited past Board decisions showing that rates greater than 180 percent of variable costs were found to be reasonable. AAR is further concerned about some shippers' proposals suggesting that the Board should consider rates in excess of 180 percent to be a demonstration of market dominance. The railroads contend that they would not be able to make the capital improvements necessary to meet current and future demand and earn a

fair return on that investment without being able to set differential prices and, when necessary, charge rates in excess of 180 percent.

Board officials told us that because the jurisdictional threshold is legislatively set, the Board has not initiated a proceeding to consider whether it should be reduced to a level below 180 percent. Board officials also stated that legislative action to reduce the jurisdictional threshold could lower rates that the Board believes are at reasonable levels as a result of competition, involve the Board in reviewing rates that are not unreasonable, and result in the Board's needing more staff and resources to accommodate a potential increase in rate complaint cases.

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## Prospects for Increasing Competition in the Railroad Industry

While shipper groups suggest that improving the rate complaint process would reduce the barriers they face when filing rate complaints, they contend that increased competition in the railroad industry would do more—it would lower rates and diminish the need for the process itself. Shippers and railroads disagree, however, on the need to increase competition. Shipper groups contend that increasing competition would enhance the viability of their businesses, lower the freight rates they currently pay, and diminish the overall need for the rate complaint process. The class I railroads contend that competition is greater than it has ever been and note that current rates are 46 percent lower than they were in 1982. According to the railroads, the deregulation of the industry has increased their revenue, decreased rates, and improved the overall financial viability of the industry—all critical goals of the Staggers Rail Act.

Some shippers want the ability to choose between railroads when there is an option and contend that in certain situations, they are unable to do so. In our discussions with shipper groups, the following five different methods emerged as suggestions to increase competition in the railroad industry:

- require the Board to make a track segment owned by one railroad available to competing railroads for a fee (grant trackage rights),
- increase shippers' access to smaller regional or shortline railroads,
- require the Board to grant reciprocal switching agreements—making a railroad transport the cars of a competing railroad, for a fee,

- reverse the Board’s “bottleneck decision,”<sup>11</sup>
- and allow shippers to dictate the routing of their shipments, including interchange points (commonly called open routing).

Of the rail shippers that responded to our survey, an average of 436 expressed opinions on different aspects of the rate complaint process, and an average of 567 expressed opinions on increasing competition in the railroad industry. Table 4.3 shows the options we presented to shippers and their response. The percentages reflect the number of shippers that responded that the option was extremely to very important. We did not analyze the implications for implementing these options or the effects these options would have on shippers or the railroad industry.

**Table 4.3: Percentage of Rail Shippers Responding That Increasing Aspects of the Railroad Competition Was Extremely to Very Important**

<b>Options to increase competition</b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Total</b>
Require the Board to grant trackage rights if it is found that competition is not adequate	79	86	86	81
Require railroads to increase rail access for shortline and/or regional railroads	74	75	79	75
Require STB to grant reciprocal switching at the nearest junction or interchange upon reasonable request of a shipper or railroad	72	73	84	74

(continued)

<sup>11</sup>Some shippers have more than one rail carrier that serves them at their origin and/or destination points and have at least one segment of a shipping route that is served by a single railroad. Such a segment is referred to as a bottleneck. The Board’s bottleneck decision held that, under the current statute, if a railroad can provide single-line service from origin to destination, it is not required to quote a separate rate for the bottleneck portion of the route, except under certain circumstances. The U.S. Court of Appeals for the Eighth Circuit recently affirmed the Board’s decision that a bottleneck carrier generally need not quote a separate rate for the bottleneck portion of the route. However, the court declined to rule on the railroads’ appeal of the Board’s holding that separately challengeable bottleneck rates are required whenever a shipper has a contract over the non-bottleneck segment of a through movement. Mid-American Energy Co. v. Surface Transportation Board, No. 97-1081 (8<sup>th</sup> Cir. Feb. 10, 1999).

**Chapter 4**  
**Barriers to the Rate Complaint Process and**  
**Possible Solutions**

<b>Options to increase competition</b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Total</b>
Require railroads to quote rates for all route "segments," including those subject to "bottleneck" conditions	67	84	78	71
Allow shippers to specify the routing of their shipments, including interchange points (commonly called open routing)	45	42	43	49

Note: Each percentage represents rail shippers that expressed an opinion regarding a particular option. Some shippers did not express an opinion for some options. App. III lists the sampling error and the number of missing or "Don't Know" responses associated with these estimates.

Source: GAO's survey of railroad shippers.

Most shippers support four of the five options for increasing competition; shippers gave less support to the option of allowing them to specify the routing of their shipments. Of the 709 rail shippers we surveyed, an estimated 81 percent said that the Board should grant trackage rights to competing railroads to improve competition in the railroad industry. Furthermore, our estimates show that from 71 to 75 percent favored granting reciprocal switching agreements, increasing shortline railroad access to the major railroads, and expanding the relief provided in the Board's bottleneck decision.

The railroads and AAR disagree with shippers on the need for additional competition. AAR officials contend that the Board may currently grant trackage rights and reciprocal switching where there are competitive abuses. AAR sees additional efforts to impose reciprocal switching agreements and trackage rights as a kind of "forced" access and greater government regulation of shipping rates that would return the industry to the poor financial condition it was in before deregulation. Furthermore, AAR stated that these methods should be used only as a remedy when needed, not as a means to create additional competition. Regarding increased access to shortline railroads, AAR officials noted that the

association has recently entered into a cooperative agreement with the American Shortline and Regional Railroad Association. The 5-year agreement seeks to improve customer service through a mutual car supply policy, cooperative interchange service agreements, and reduced switching barriers. AAR officials challenged the Board's bottleneck decision in court on the grounds that it went too far in requiring railroads to provide separately challengeable rates in certain circumstances.

Board officials agreed with AAR that requiring trackage rights and reciprocal switching agreements are remedies that are currently available to shippers and that they have been used where appropriate. However, Board officials stated that it is not authorized to grant trackage rights or reciprocal switching as a remedy for a complaint about the reasonableness of a rate because the only statutory remedies for an unreasonable rate are reparations and rate prescriptions. The Board has approved certain aspects of the AAR/ASLRRRA cooperative agreement. With respect to the bottleneck decision, Board officials stated that the decision was required by existing law.

Board officials stated that the suggestions for increasing rail competition—primarily through various means of “open access” to private sector rail lines—would require substantial changes to the underlying statute and could alter the shape and condition of the rail system. They stated that many shippers assume that greater competition would lead to lower rates and improved service, without the need for differential pricing. Board officials cited a countervailing concern, however, that not all shippers would benefit equally from such changes and that the result could be a smaller rail system serving fewer shippers and a different mix of customers than are served today. Officials contend that many shippers (particularly small shippers on remote lines) might not benefit from an “open access” system in the way that they might expect.

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## **Agency Comments and Our Evaluation**

In commenting on a draft of this report, the Board noted that our survey did not distinguish captive shippers from those with competitive transportation alternatives, which by statute are not eligible to use the rate complaint process. Thus, the Board indicated that the views of shippers with competitive options are not instructive in assessing the effectiveness of the rate complaint process. The Board also believed that we should clarify that the survey asked shippers to comment on the standard process and not the simplified procedures, even though the majority of the survey respondents would likely qualify for the simplified procedures.

We disagree that our survey should have sought comments only from captive shippers. Such an approach would inject excessive bias into the survey and would have produced results that represented only a small segment of the shipper community. More importantly, we disagree that only captive shippers would be in a position to provide informed analysis of the rate complaint process and methods to improve it. The consolidation in the railroad industry has made all shippers keenly aware of their potential for becoming captive to only one railroad and equally aware of the means available to seek recourse should they believe that their rates are unreasonable. In addition, the Board's position is contrary to its standard practice of inviting comments from all parties during its deliberations—deliberations that can vary from improvements to the rate complaint process to more complex issues, such as railroad mergers and consolidations. Therefore, we chose to survey all shippers and class I railroads to garner their insights into the rate complaint process; to discount any comment minimizes the views and opinions of the shipper community.

Regarding the Board's comment on distinguishing between the standard and simplified procedures in the report and the survey, we have clarified the report to better differentiate between the two processes. In addition, when presenting survey results, we note that the survey refers to the standard rate complaint process.

The Board stated that the results of our survey reflect the natural response to be expected from customers when asked if they would like lower prices and the ability to obtain lower prices through a faster, simpler, and less costly process. In addition, the Board noted that the report did not address whether the surveyed shippers were being charged higher rates than they should reasonably be expected to pay. The Board indicated that, under the demand-based differential pricing principles that the Congress has determined should apply to the rail industry, it is not necessarily unreasonable to have even one shipper paying a higher rail rate than a comparable shipper with greater transportation alternatives.

The Board's characterization of our survey is not accurate. We did not ask shippers if they wanted lower prices. Rather, we sought to determine the barriers shippers face in filing rate complaints with the Board and options for improving this process. Furthermore, the survey was not limited to the Board's rate complaint process but also sought information about the quality of service that shippers had received from 1990 to 1997. This information is presented in our companion report. We agree with the

Board's comment that we did not address whether the surveyed shippers were being charged higher rates than they should reasonably be expected to pay. Because this is the stated purpose of the highly complex and time-consuming rate complaint process, we defer these judgments to the Board.

Finally, the Board believed we should more clearly identify the percentage of shippers that expressed a specific opinion on issues presented in the survey to avoid misleading interpretations of the survey results. For example, because 25 percent of the surveyed rail shippers found their rates to be reasonable, our presentation of the barriers shippers encounter in filing a rate complaint should only be attributed to the remaining 75 percent of rail shippers responding. In addition, the Board noted that those shippers that responded "Don't Know" or that did not answer specific questions should be included among those shippers that did not assign great importance to the choices identified rather than excluded from the total count.

We have clarified our presentation of the survey responses to distinguish between those shippers that consider their rates to be reasonable and other shippers. However, we disagree with the Board's assertion that we include "Don't Know" or missing responses with those shippers that were satisfied with certain aspects of the rate complaint process. We have no basis for inferring such a precise meaning from the "Don't Know" or missing response categories. Such responses could mean that the respondents did not understand the question, answered only those questions for which they had a strong opinion, did not believe their responses would be kept confidential, or erroneously skipped a question. Accordingly, the report only tabulates data where the shippers' responses are clearly marked.

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# McCarty Farms, Inc. et al. v. Burlington Northern, Inc.

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In 1980, a group of approximately 10,000 Montana farmers and grain elevator operators (the McCarty Farms Group) filed a class action suit against Burlington Northern Railroad in the U.S. District Court for the District of Montana. McCarty Farms alleged that Burlington Northern Railroad was charging unreasonable rates for transporting wheat from Montana to ports in Oregon and Washington State for the 2-year period ending September 12, 1980. The district court referred the matter to the Interstate Commerce Commission (ICC) to determine the reasonableness of the rates. On March 27, 1981, McCarty Farms filed a complaint with the ICC challenging not only Burlington Northern's wheat rates but also its rates for barley. McCarty Farms asked ICC to prescribe future rates. It did not limit its request for reparations to the 2-year period specified in its complaint filed with the district court. In a December 1981 decision, an administrative law judge found that (1) Burlington Northern had market dominance over wheat and barley traffic, (2) Burlington Northern's present and past rates were unreasonable insofar as they exceeded 200 percent of the variable cost of service, and (3) a revenue-to-variable-cost ratio of 200 percent would constitute the maximum reasonable rate for the transportation of wheat and barley.

In a separate proceeding filed with the ICC on March 26, 1981, the Montana Department of Agriculture and the Montana Wheat Research and Marketing Committee (state of Montana) challenged Burlington Northern's rates for multiple-car and trainload shipments of wheat and barley and asked the ICC to prescribe rates for future shipments. In a July 1982 decision, the ICC reopened the McCarty Farms complaint and instituted a separate proceeding regarding the reasonableness of barley rates because it did not believe they were part of the district court's referral. The ICC consolidated the McCarty Farms and state of Montana proceedings.

According to Board officials, in 1983, the ICC vacated the administrative law judge's opinion because the rate reasonableness standard used had been discredited and held the three consolidated cases in abeyance, pending its search for appropriate rate standards for noncoal cases. The ICC reopened the proceedings in September 1984 in response to a district court directive to move forward with the case. In an April 1986 decision, the ICC reopened the record for additional market-dominance evidence because of the changes made to its market-dominance guidelines in 1985. After extensive discovery, in May 1987, the ICC ruled that Burlington Northern dominated the market over wheat and barley movements from Montana to the Pacific Northwest. Having determined that Burlington Northern dominated the market for the shipments at issue, ICC turned to



the rate-reasonableness analysis. ICC decided to use this case to develop a new rate test—the revenue-to-variable-cost comparison. In 1988, applying the new comparison, the ICC found some of the rates unreasonable for some years (1981 through 1986) and directed the parties to calculate reparations.

In 1991, the ICC affirmed its earlier decisions, concluding that Burlington Northern dominated the movement of wheat and barley and that Burlington Northern's rates for this traffic were unreasonable. According to Board officials, the ICC calculated the amount of reparations owed by Burlington Northern through 1988 to be \$8.97 million plus interest and prescribed the level of future rates. The ICC subsequently updated the amount of reparations and interest due to \$16.6 million through July 1, 1991, and removed the rate prescription as unnecessary since the rates had been in compliance with the rate reasonableness standard for the prior 5 years.

Both Burlington Northern and McCarty Farms sought judicial review of the ICC's decision. In 1993, the U.S. Court of Appeals for the District of Columbia Circuit questioned the ICC's use of the revenue-to-variable-cost comparison and the reasons for not applying the stand-alone cost test to this large volume of traffic. The court sent the case back to the ICC to reconsider whether the stand-alone cost model would be more appropriate. On remand, both parties agreed to apply the stand-alone cost test and from 1993 through 1995, prepared and presented their stand-alone cost evidence. According to Board officials, the review of the stand-alone cost evidence was delayed somewhat because key ICC staff who had been working on the case left the agency as a result of the reduction-in-force implemented following the ICC Termination Act of 1995.

In an August 1997 decision, the Board found that McCarty Farms had failed to show that Burlington Northern's rates were unreasonably high on the basis of its review of the evidence of the stand-alone cost model. According to the Board, this conclusion is consistent with the ICC's prior conclusion that certain rates during 1981 through 1986 were unreasonable. On the basis of the 20-year analysis presented in the discounted cash flow analysis in the stand-alone cost model, Burlington Northern earned more revenues in 1981 through 1986 than was necessary to cover the stand-alone costs allocated to those years. However, those additional earnings were needed to make up for shortfalls in other years. The Board discontinued the proceedings.

In October 1997, McCarty Farms appealed the Board's August 1997 decision to the U.S. Court of Appeals for the District of Columbia Circuit. After examining McCarty Farms' brief to the court, the Board agreed that there were certain errors in the August 1997 decision and issued a supplemental decision to correct those determinations that it agreed were erroneous. Even after it made these corrections, the Board still concluded that Burlington Northern's rates were reasonable. In a decision issued on October 20, 1998, the court affirmed the Board's decision, agreeing that the challenged rates had not been shown to be unreasonable under the stand-alone cost test. As noted earlier, the court held that it did not have jurisdiction over claims that were initially raised by the McCarty Farms Group's complaint in federal district court and subsequently referred to the ICC. Accordingly, the court did not rule on the Board's decision as it pertained to those claims. The district court has since dismissed its portion of the case at the request of the parties.

# Rate Complaints Either Pending or Filed With the Board, 1990-98

**Table II.1: Complaints Dismissed at Shipper's Request**

No.	Title	Commodity	Date filed	Market-dominance present? <sup>a</sup>	Date of dismissal <sup>b</sup>
1	Increased rates on coal, Louisville and Nashville Railroad, ICC 37063	Coal	Investigation instituted, Oct. 30, 1978	Yes	Dec. 26, 1991
2	Dayton Power and Light Co. v. Louisville and Nashville Railroad, ICC 38025S	Coal	Mar. 27, 1981	Yes	Dec. 26, 1991
3	Consolidated Papers, Inc. et al. v. Chicago and North Western Transportation Co., et al., ICC 37626	Pulpwood, woodchips	Feb. 27, 1981	Yes	Mar. 25, 1992
4	McGraw Edison v. Alton and Southern Railway Company, et al., ICC 38238S	Electric transformers	Mar. 27, 1981	Yes	July 27, 1990
5	Amstar Corporation v. Alabama Great Southern Railroad et al., ICC 38239S (pre-1983 information only) (post-1982 was 38239S (Sub-No.1))	Sugar	Mar. 27, 1981 <sup>c</sup>	Yes, for some movements	Oct. 18, 1990
6	Coal Trading Corporation et al. v. Baltimore and Ohio Railroad Co. et al., ICC 38301S	Coal	Mar. 27, 1981	Yes (for three of four complainants)	June 13, 1990
7	Iowa Power Inc. v. Burlington Northern RR Co., ICC 40224	Coal	Apr. 27, 1989	Not determined	Nov. 1, 1991
8	Kaiser Aluminum & Chemical Corporation v. CSX Transportation, Inc. et al., ICC 40228	Coal	May 22, 1989	Not determined	Jan. 5, 1990
9	Exxon Coal USA, Inc. and PSI Energy, Inc. v. Norfolk Southern Corporation, ICC 40424	Coal	Mar. 30, 1990	Not determined	Feb. 24, 1992
10	Cabot Corporation v. Southern Pacific Transportation Co., et al., ICC 40464	Carbon black (chemical)	July 16, 1990	Not determined 1991	Mar. 28,
11	Degussa Corp. v. Southern Pacific Transportation Co., et al., ICC 40903	Tread and carcass grade carbon black (chemical)	Jan. 8, 1993	Not determined	Jan. 12, 1995
12	Mobil Oil Corporation v. Daniel R. Murray, Trustee of the Chicago, Missouri and Western Railway Co., ICC 41449	Synthetic plastic resin (chemical)	Aug. 24, 1994	Not determined	May 23, 1995

(continued)

**Appendix II**  
**Rate Complaints Either Pending or Filed**  
**With the Board, 1990-98**

No.	Title	Commodity	Date filed	Market-dominance present? <sup>a</sup>	Date of dismissal <sup>b</sup>
13	Kansas City Power and Light v. Missouri Pacific Railroad Co., et al., ICC 41528	Coal	Dec. 30, 1994	Not determined	Dec. 19, 1995
14	South-West Railroad Car Parts Co. v. Missouri Pacific Railroad, ICC 40073	Retired railroad cars	Dec. 12, 1985	Tentatively found no market dominance based on finding geographic competition	Apr. 9, 1998
15	Western Resources, Inc. v. Atchison, Topeka and Santa Fe Railway Co., ICC 41604	Coal	July 31, 1995	Not determined	Aug. 12, 1997
16	Potomac Electric Power Company v. CSX Transportation, Inc., STB 41989	Coal	Jan. 3, 1997	Not determined	June 18, 1998
17	Armstrong World Industries, Inc. v. Conrail Corporation, STB 41990	Perlite rock	Jan. 10, 1997	Not determined	Mar. 31, 1997
18	Sierra Pacific Power Company and Idaho Power Co. v. Union Pacific Railroad Company, STB 42012	Coal	Aug. 1, 1997	Not determined	July 17, 1998

<sup>a</sup>Present for at least some of the traffic in question but not necessarily for all of it.

<sup>b</sup>In at least five of the complaints, the shipper requested that the ICC/Board dismiss the complaint because the shipper entered into a private transportation contract with the railroad. This information was not available for all complaints.

<sup>c</sup>In a decision served on June 7, 1989, the ICC divided the proceeding that originated with one complaint into two proceedings in order to assess the reasonableness of the rates for the period through 1982, while reconsidering whether market dominance existed after 1982. The ICC designated the post-1982 part of this case as 38239S (Sub-No.1). For the purposes of this analysis, we considered this as one complaint.

Source: GAO's analysis of Surface Transportation Board information.

**Appendix II  
Rate Complaints Either Pending or Filed  
With the Board, 1990-98**

**Table II.2: Complaints Dismissed/Discontinued in Favor of the Railroad**

<b>No.</b>	<b>Title</b>	<b>Commodity</b>	<b>Date filed</b>	<b>Market-dominance present?<sup>a</sup></b>	<b>Status</b>
1	Bituminous Coal, Hiawatha, Utah to Moapa, Nevada, ICC 37038	Coal	Investigation instituted Oct. 5, 1978	Yes	The ICC found the rates to be reasonable; proceedings discontinued on Oct. 24, 1994
2	Aggregate Volume Rate on Coal, Acco, Utah to Moapa, Nevada, ICC 37409	Coal	Investigation instituted Apr. 4, 1980	Yes	The ICC found the rates to be reasonable; proceedings discontinued on Oct. 24, 1994.
3	Amstar Corporation v. Atchison, Topeka, and Santa Fe Railway Company, et al., ICC 37478	Corn syrup	July 16, 1980	Yes, for some but not all movements	ICC dismissed the complaint on Sept. 28, 1995 because it found rates to be reasonable.
4	Georgia Power Company, et al. v. Southern Railway Co. and Norfolk Southern Corp., ICC 40581	Coal	May 7, 1991	No	The ICC dismissed the complaint due to lack of market-dominance on Nov. 8, 1993.
5	McCarty Farms, Inc. et al. v. Burlington Northern, Inc., ICC 37809	Wheat (grain)	Mar. 27, 1981	Yes	The Board found rates to be reasonable; proceedings discontinued on Aug. 20, 1997; the Board made technical corrections on May 11, 1998.
6	McCarty Farms, Inc. et al. v. Burlington Northern, Inc., ICC 37809 (Sub-No.1)	Wheat and barley (grain)	July 30, 1982	Yes	The Board found rates to be reasonable; proceedings discontinued on Aug. 20, 1997.
7	McCarty Farms, Inc. et al. v. Burlington Northern, Inc., ICC 37815S	Wheat and barley (grain)	Mar. 26, 1981	Yes	The Board found rates to be reasonable; proceedings discontinued on Aug. 20, 1997.

<sup>a</sup>Present for at least some of the traffic in question, but not necessarily for all of it.

Source: GAO's analysis of Surface Transportation Board information.

**Appendix II**  
**Rate Complaints Either Pending or Filed**  
**With the Board, 1990-98**

**Table II.3: Complaints Otherwise Dismissed**

<b>No.</b>	<b>Title</b>	<b>Commodity</b>	<b>Date filed</b>	<b>Market-dominance present?<sup>a</sup></b>	<b>Status</b>
1	<u>Central Power and Light Co. v. Southern Pacific Transportation Co., ICC 41242</u>	Coal	Apr. 12, 1994	Not determined	The Board dismissed the complaint on Dec. 31, 1996, because the regulatory relief sought was not available. Shipper's appeal pending.
2	<u>MidAmerican Energy Co. v. Union Pacific Railroad Co., et al., ICC 41626</u>	Coal	Sept. 27, 1995	Not determined	The Board dismissed the complaint on Dec. 31, 1996, because the regulatory relief sought was not available. Shipper's appeal pending.
3	<u>H.B. Fuller Co. v. Southern Pacific, ICC 41510</u>	Vinyl acetate (chemical)	Dec. 8, 1994	Not determined	The Board dismissed the complaint for lack of jurisdiction on Aug. 22, 1997. The transportation was performed under contract.
4	<u>Shore Line Enterprises v. Southern Pacific Transportation Co., STB 41907</u>	Cars for scenic railroad	July 17, 1996	Not determined	The Board dismissed the complaint on Aug. 28, 1997, because the shipper never filed an opening statement and failed to respond by the appointed dates.
5	<u>Omaha Public Power District v. Union Pacific Railroad Co., STB 42006</u>	Coal	June 20, 1997	Not determined	The Board dismissed the complaint on Oct. 17, 1997 because the transportation was performed under contract. Shipper's appeal pending.

<sup>a</sup>Present for at least some of the traffic in question, but not necessarily for all of it.

Source: GAO's analysis of Surface Transportation Board information.

**Appendix II  
Rate Complaints Either Pending or Filed  
With the Board, 1990-98**

**Table II.4: Complaints Decided in Favor of the Shipper**

No.	Title	Commodity	Date filed	Market-dominance present? <sup>a</sup>	Status
1	<u>Arizona Public Service Company and PacifiCorp v. Atchison, Topeka, and Santa Fe Railway Co., ICC 41185</u>	Coal	Jan. 3, 1994	Yes	Decided July 29, 1997. Shipper won; reparations and prescriptions awarded.
2	<u>West Texas Utilities Company v. Burlington Northern Railroad Co., ICC 41191</u>	Coal	Jan. 12, 1994	Yes	Decided May 3, 1996. Shipper won; reparations and prescriptions awarded.

<sup>a</sup>Present for at least some of the traffic in question, but not necessarily for all of it.

Source: GAO's analysis of Surface Transportation Board information.

**Table II.5: Complaints Pending With the Board**

No.	Title	Commodity	Date filed	Market-dominance present? <sup>a</sup>
1	<u>DOE and DOD v. Baltimore and Ohio Railroad Co. et al., ICC 38302S</u>	Spent nuclear fuel	Mar. 27, 1981	Yes
2	<u>DOE and DOD v. Baltimore and Ohio Railroad Co. et al., ICC 38376S</u>	Spent nuclear fuel	Mar. 27, 1981	Yes
3	<u>DOE and DOD v. Baltimore and Ohio Railroad Co., et al., I&amp;S 9205</u>	Spent nuclear fuel	Oct. 3, 1994 <sup>b</sup>	Yes
4	<u>Pennsylvania Power and Light Co. v. Conrail, ICC 41295</u>	Coal	Aug. 4, 1994	The parties have asked the Board to hold the proceedings in abeyance, pending possible settlement.
5	<u>Shell Chemical Company and Shell Oil Company v. Boston and Maine Corporation, et al., ICC 41670</u>	Polyethylene terephthalate (chemical)	Dec. 26, 1995	Not determined
6	<u>Grain Land Coop v. Canadian Pacific Rail System and Soo Line Railroad Co. D/B/A CP Rail System, STB 41687</u>	Grain	Apr. 5, 1996	Not determined

(continued)

**Appendix II**  
**Rate Complaints Either Pending or Filed**  
**With the Board, 1990-98**

<b>No.</b>	<b>Title</b>	<b>Commodity</b>	<b>Date filed</b>	<b>Market-dominance present?<sup>a</sup></b>
7	FMC Wyoming Corporation & FMC Corporation v. Union Pacific Railroad Co., STB 42022	Soda ash, phosphorus, phosphate rock, coke, sodium bicarbonate, including sodium sesqui carbonate (chemical)	Oct. 31, 1997	Not determined
8	PSI Energy v. CSX Transportation, Inc. and Soo Line Railroad Co. D/B/A Canadian Pacific Railway, STB 42034	Coal	July 6, 1998	Not determined
9	Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, STB 42038	Coal	Dec. 30, 1998	Not determined

Legend:

DOD = Department of Defense  
DOE = Department of Energy

Note: Other complaints may also be pending because either the shipper or railroad appealed the Board's decision to the U.S. Court of Appeals.

<sup>a</sup>Present for at least some of the traffic in question, but not necessarily for all of it.

<sup>b</sup>According to Board officials, Investigation and Suspension Docket Number 9205 was initiated on Dec. 8, 1978. The ICC resolved the case by decisions issued in 1980 and 1981. In 1991, the ICC denied a request from certain railroads involved in the case that had asked the ICC to reopen the proceeding. However, in Oct. 1994, the Department of Defense and the Department of Energy asked the ICC to reopen the proceeding. The petition to reopen is still pending.

Source: GAO's analysis of Surface Transportation Board information.



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# Survey Response Frequencies

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This appendix presents the results of our shipper survey in summary form. It discusses the methodology used in controlling for sampling error, nonsampling error, and presentation. In administering this survey, we agreed to hold the responses of individual shippers confidential. In the few instances where the responses of individual shippers could be determined from the data, we have not presented the results.

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## Sampling Errors and Confidence Intervals of Estimates

Since we used a sample (called a probability sample) of grain, coal, chemicals and plastics shippers to develop our estimates, each estimate has a measurable precision, or sampling error, that may be expressed as a plus/minus figure. A sampling error indicates how closely we can reproduce from a sample the results that we would obtain if we were to take a complete count of the universe using the same measurement methods. By adding the sampling error to and subtracting it from the estimate, we can develop upper and lower bounds for each estimate. This range is called a confidence interval. Sampling errors and confidence intervals are stated at a certain confidence level—in this case, 95 percent. For example, a confidence interval at the 95-percent confidence level means that in 95 out of 100 instances, the sampling procedure we used would produce a confidence interval containing the universe value we are estimating.

We obtained a response rate of 60 percent. We did not test for potential differences between the respondents who did and did not respond to our survey because we had little or no information about the nonrespondents. As a result, we do not know the effect of these nonrespondents on the results of our survey. Our results are generalizable to the views and opinions of the groups we surveyed. In addition, some estimates do not always represent the entire population because some shippers did not answer all of the questions.

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## Controlling for Nonsampling Errors

In addition to the reported sampling errors, the practical difficulties of conducting any survey may introduce other types of errors, commonly referred to as nonsampling errors. For example, differences in how questions are interpreted, errors in entering data, incomplete sampling lists, and the types of people who do not respond can all introduce unwanted variability into the survey results. We included steps in both the data collection and data analysis stages to minimize such nonsampling errors. Some of these steps included pretesting questionnaires with members of shipping associations, obtaining comments on the

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questionnaire from shipper and railroad associations, reviewing answers during follow-up visits with shippers and railroads, double-keying and verifying all data during data entry, and checking all computer analyses with a second analyst.

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## Data Presentation

Our analysis represents those shippers who expressed an opinion regarding each question. Shippers who did not choose to answer a question have been included with those that indicated “Don’t Know”. In instances where “Don’t Know” is an option, we show the combined number who actually checked “Don’t Know” and those who did not answer. All responses are presented in percentages. Each response was weighted to represent the group to which it belonged. Percentages were rounded to their nearest whole number; totals may be greater or less than 100 percent. We also show where a low number of responses did not yield a statistically valid result. Questions 5 through 10 have been converted to ranges and are included in tables III.1 through III.6. Any technical notes regarding the data presented appear at the end of this appendix.

### Appendix III Survey Response Frequencies

#### U.S. GENERAL ACCOUNTING OFFICE Survey of Shippers Regarding the Surface Transportation Board's Freight Rate Relief Process and U.S. Rail Freight Service

##### INTRODUCTION

The U.S. General Accounting Office (GAO), an agency which reviews federal programs, has been asked by the Congress to conduct a study of the Surface Transportation Board's (STB) maximum rate relief process and the state of rail freight service in the U.S. As part of this review, we are conducting a survey of a random sample of bulk grain, coal, chemical and plastics shippers that use railroads to ship their goods in the continental United States. Your organization has been selected from a list of major shippers of these commodities. The goal of the survey is to obtain shippers' perceptions on the level of rates they pay railroads, service they receive and potential relief available to them under the STB's maximum rate relief process.

Your cooperation in completing this questionnaire is critical to our review. We ask that you complete our questionnaire so that we will have the benefit of your opinions and experiences when preparing our report to the Congress. Your name and the name of your organization will be kept confidential. While our results will generally be provided in summary form, individual answers may be discussed in our report. However, we will not include any information that would identify individual respondents. Further, once our analysis of the questionnaires is complete, we will destroy any link between individual respondents and their responses.

##### INSTRUCTIONS

Please complete the questionnaire and return it to the address below within 10 working days. We have provided a postage-paid business reply envelope to facilitate the return of your questionnaire. In the event that the return envelope is misplaced, please send your completed questionnaire to:

U.S. General Accounting Office  
Attn: David Lehrer  
200 W. Adams, Suite 700  
Chicago, IL 60606

If you have any questions, please call David

Lehrer toll free at (800) 333-4524 or Luann Moy at (202) 512-6852.

##### GENERAL INFORMATION ABOUT YOUR COMPANY

1. Which of the following commodities does your company ship? (*Check all that apply*) (n = 1,232)
  1. ☐ Bulk grain [56.6  $\pm$  1.84]
  2. ☐ Coal [7.4  $\pm$  0.62]
  3. ☐ Chemicals and/or plastics [14.6  $\pm$  0.98]
  4. ☐ None of the Above (***Stop. Please go no further. Please return this questionnaire in the enclosed envelope.***) [23.3  $\pm$  1.96]
2. In which of the following years did your company ship bulk grain, coal, chemicals or plastics by rail? (*Check all that apply*)
  - ☐ 1990 [68.0  $\pm$  2.54]
  - ☐ 1991 [68.7  $\pm$  2.54]
  - ☐ 1992 [69.6  $\pm$  2.52]
  - ☐ 1993 [69.6  $\pm$  2.52]
  - ☐ 1994 [70.0  $\pm$  2.50]
  - ☐ 1995 [70.2  $\pm$  2.50]
  - ☐ 1996 [69.6  $\pm$  2.52]
  - ☐ 1997 [68.5  $\pm$  2.54]
  - ☐ 1998 [66.7  $\pm$  2.58]
  - ☐ None (***Stop. Please go no further. Please return this questionnaire in the enclosed envelope.***) [26.7  $\pm$  2.42]

**Appendix III  
Survey Response Frequencies**

3. From what geographic region[s] does your company ship bulk grain, coal, chemicals or plastics? *(Please refer to the map on page 3; check all that apply.)* (n = 709)

1. [ ] Region 1 - Pacific  
[10.0 ±1.92]
2. [ ] Region 2 - Mountain  
[20.4 ±2.34]
3. [ ] Region 3 - West North Central  
[48.4 ±3.08]
4. [ ] Region 4 - West South Central  
[17.6 ±2.28]
5. [ ] Region 5 - East North Central  
[32.2 ±3.06]
6. [ ] Region 6 - East South Central  
[13.3 ±1.96]
7. [ ] Region 7 - New England  
[1.8 ±0.84]
8. [ ] Region 8 - Middle Atlantic  
[9.0 ±1.54]
9. [ ] Region 9 - South Atlantic  
[14.9 ±2.08]

4. To what geographic region[s] does your company ship bulk grain, coal, chemicals or plastics? *(Please refer to the map on page 3; check all that apply.)*

1. [ ] Region 1 - Pacific  
[46.9 ±3.14]
2. [ ] Region 2 - Mountain  
[29.5 ±2.80]
3. [ ] Region 3 - West North Central  
[53.0 ±3.20]
4. [ ] Region 4 - West South Central  
[56.2 ±3.16]
5. [ ] Region 5 - East North Central  
[44.6 ±3.14]
6. [ ] Region 6 - East South Central  
[35.1 ±3.02]
7. [ ] Region 7 - New England  
[17.1 ±2.22]
8. [ ] Region 8 - Middle Atlantic  
[27.9 ±2.70]
9. [ ] Region 9 - South Atlantic  
[38.6 ±3.08]
10. [ ] From domestic origins to international destinations.  
[14.4 ±2.08]

5. In 1997, about what percentage of your company's shipments of bulk grain, coal,

chemicals or plastics went by the following modes of transportation? *(Enter percent; Please make sure your responses total 100%.)* [See table III.1]

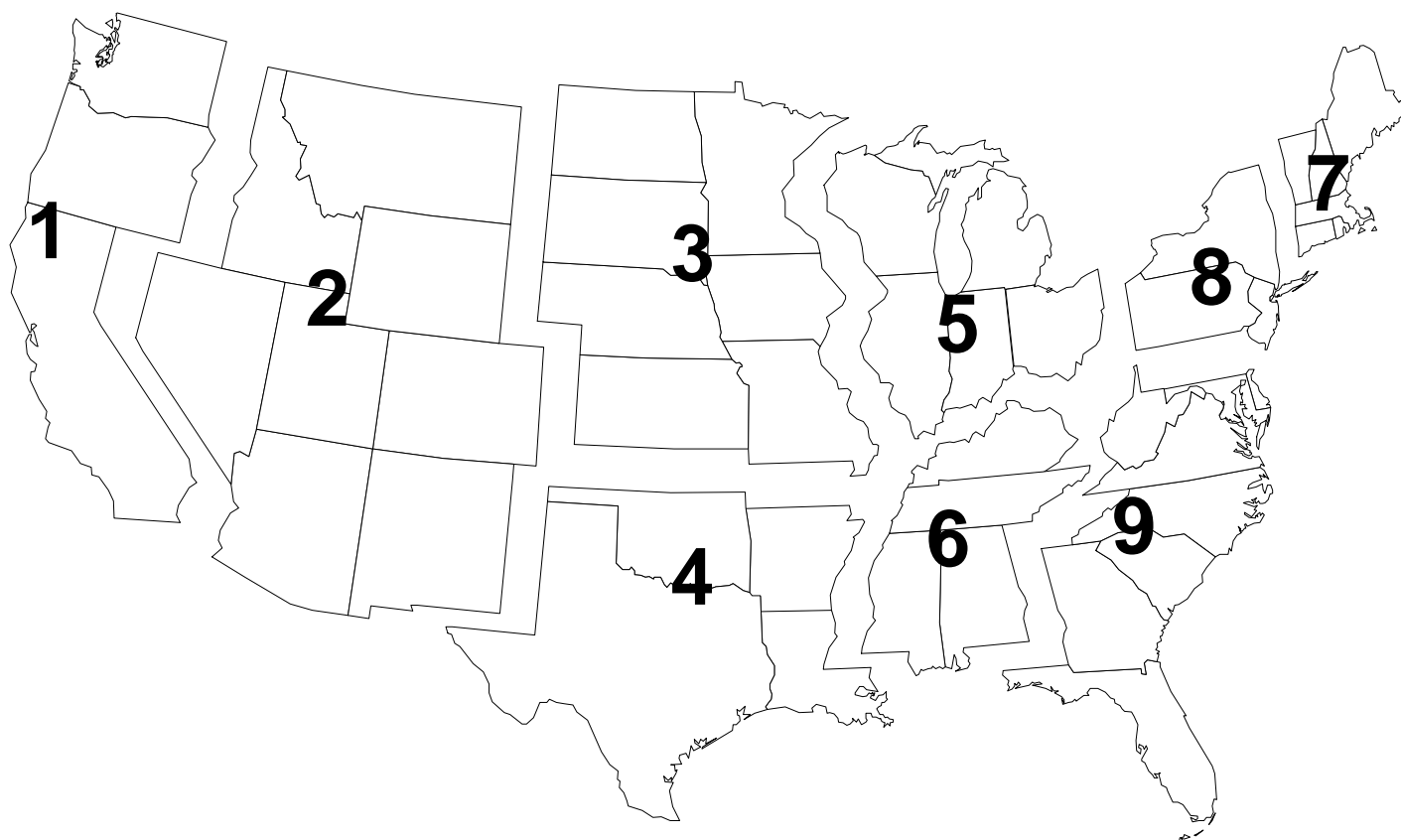
1. \_\_\_\_ % Class 1 railroad
2. \_\_\_\_ % Short-Line or regional railroad
3. \_\_\_\_ % A combination of Class 1 and short-line or regional railroads
4. \_\_\_\_ % Semi-tractor trailer or other truck
5. \_\_\_\_ % Inland waterway (including barges)
6. \_\_\_\_ % Deep water great lakes vessel
7. \_\_\_\_ % Ocean
8. \_\_\_\_ % Air
9. \_\_\_\_ % Intermodal (a combination of railroad and other modes)
10. \_\_\_\_ % Intermodal (a combination of modes **NOT including railroad**)
11. \_\_\_\_ % Other *(please specify)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**100 % Total**

6. Since 1990, on average, how many **loaded** rail cars has your company used for out-bound shipments of bulk grain, coal, chemicals or plastics per year? *(Enter Number)* [See table III.2]

\_\_\_\_ Average annual number of **loaded** out-bound rail cars.

## U.S. Geographic Regions



**Appendix III  
Survey Response Frequencies**

7. Since 1990, on average, what percentage of your annual out-bound shipments (that you identified in the previous question) of bulk grain, coal, chemicals or plastics were shipped in rail cars owned or leased (except leased from a railroad) by your company? *(Enter percent, if none, enter 0)*  
[See table III.3]

\_\_\_\_\_ % Percent of average annual out-bound shipments in cars that are owned by my company

8. Since 1990, what percentage of each of the following rate setting methods were used to set the freight rates of your annual out-bound shipments? *(Enter percent; if none, enter '0')*  
[See table III.4]

1. \_\_\_\_\_ % Contract rate *(do not include voucher, guaranteed car delivery, or similar programs.)*
2. \_\_\_\_\_ % Published tariff or public rate. *(If '0', please go to question 10)*

9. Of the published tariff or public rate shipments identified in question 8 what percentage was exempt from regulation -- that is, commodities, or classes of transportation (such as box car) that have been granted exemption by STB or its predecessor the Interstate Commerce Commission (ICC) from economic regulation? *(Enter Percent)*  
[See table III.5]

\_\_\_\_\_ % Exempt from regulation

10. Consider the out-bound movements of bulk grain, coal, chemicals, or plastics that your company made by railroad. About what percentage, if any, of these shipments could only go from origin to destination using a single railroad in 1997 as compared to 1990? *(Enter Percent, if none, enter '0')*  
[See table III.6]

	1990	1997
Percentage of shipments that could only go from origin to destination using only one railroad	_____ %	

**Appendix III**  
**Survey Response Frequencies**

**FILING RATE COMPLAINTS WITH THE  
SURFACE TRANSPORTATION BOARD**

This section of the questionnaire deals exclusively with the railroad freight rate relief process at the STB.

11. Since 1990, has your company filed a railroad freight rate complaint with or had a railroad freight complaint decided by the STB or the ICC? *(Check One)*

1. ☐ Yes --> *(Continue)* [3.7 ±0.96]

2. ☐ No --> *(Go to Question 15)*  
[96.3 ±0.96]  
[Missing = 17]

12. If your company has filed a railroad freight rate complaint since 1990, what was the outcome of the complaint? *(Check one)*

1. ☐ Process is still ongoing<sup>a</sup>

2. ☐ Found in your company's favor<sup>a</sup>

3. ☐ Dismissed at your request<sup>a</sup>

4. ☐ Found in railroad's favor<sup>a</sup>

5. ☐ Dismissed at railroad's request<sup>a</sup>

6. ☐ Dismissed by STB or ICC ruling  
(i.e., did not meet statutory or  
administrative criteria)<sup>a</sup>

7. ☐ Other *(Please Specify)*<sup>a</sup>

\_\_\_\_\_

13. If your company has filed (or had decided) a railroad freight rate complaint since 1990, about how much did the complaint process cost you? Please consider costs such as the filing fee, legal costs, consultants, and internal costs. *(Enter dollar amount.)*<sup>a</sup>

\$ \_\_\_\_\_

14. Would you consider filing another complaint at a future time? *(Check one)*

1. ☐ Definitely yes<sup>a</sup>

2. ☐ Probably yes<sup>a</sup>

3. ☐ Probably no<sup>a</sup>

4. ☐ Definitely no<sup>a</sup>

5. ☐ Don't know<sup>a</sup>

**Appendix III  
Survey Response Frequencies**

15. Listed below are some reasons that shippers may not file complaints about railroad freight rates with the STB. **Although you may have never filed a complaint**, please indicate if each of the following is a major, moderate, minor, or not a reason that your company does not file/has not filed complaints about railroad freight rates with the STB. *(Check one for each reason)*

[ ] We have found our rail freight shipping rates to be reasonable (no reason to file a complaint).  
[25.4 ±2.82]

<b>Reasons for Not Filing Complaints with STB<sup>d</sup></b>		<b>Major Reason</b>	<b>Moderate Reason</b>	<b>Minor Reason</b>	<b>Not a Reason</b>	<b>Missing</b>
1.	The STB filing fee is cost prohibitive	29.2 ±3.76	27.4 ±3.50	17.8 ±2.94	25.7 ±3.40	[n=96]
2.	Developing the stand alone cost model is too costly	39.6 ±3.96	32.1 ±3.72	10.9 ±2.48	17.4 ±2.98	[n=109]
3.	Legal costs associated with filing complaints outweigh the benefits	42.4 ±3.96	33.5 ±3.74	11.6 ±2.46	12.6 ±2.52	[n=100]
4.	Consulting costs (other than legal) associated with filing complaints are too high	31.7 ±3.76	34.7 ±3.82	19.6 ±3.12	13.9 ±2.70	[n=103]
5.	Other parts of the complaint process are too costly <i>(Please specify)</i>	17.3 ±3.48	21.7 ±3.72	25.0 ±3.98	36.1 ±4.28	[n=190]
6.	Rate complaint process takes too long	41.4 ±3.92	32.8 ±3.78	13.0 ±2.74	12.9 ±2.58	[n=104]
7.	The STB will most likely decide on behalf of the railroads so it is not worth our effort to file a complaint	46.0 ±3.96	23.5 ±3.46	8.4 ±2.20	22.2 ±3.36	[n=102]
8.	The rate relief process is too complex	49.5 ±3.98	27.0 ±3.50	11.3 ±2.44	12.2 ±2.56	[n=98]
9.	Fear of reprisal from railroads	38.3 ±3.92	21.6 ±3.22	20.4 ±3.16	19.6 ±3.10	[n=97]
10.	Too hard to get necessary data from railroads (discovery process)	34.6 ±3.86	32.4 ±3.72	18.9 ±3.10	14.2 ±2.72	[n=103]
11.	Responding to railroad requests for data is difficult and time consuming	31.8 ±3.74	33.8 ±3.80	19.6 ±3.17	14.8 ±2.82	[n=103]
12.	Other <i>(Please specify)</i> <sup>a</sup>					

<sup>d</sup>The total number of respondents eligible to answer this question is 531. Not all respondents chose to answer all questions.



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**Appendix III**  
**Survey Response Frequencies**

**SUGGESTIONS TO IMPROVE RATE RELIEF PROCESS**

16. Overall, to what extent should the rate relief process be changed? (*Check one*)
- 1. [ ] Little or no extent [5.8  $\pm$ 2.12]
  - 2. [ ] Some extent [8.0  $\pm$ 2.22]
  - 3. [ ] Moderate extent [22.7  $\pm$ 3.62]
  - 4. [ ] Great extent [33.8  $\pm$ 4.04]
  - 5. [ ] Very great extent [29.8  $\pm$ 3.90]
  - 6. [ ] Don't know / Can't comment [n=340<sup>b</sup>]

**Appendix III  
Survey Response Frequencies**

17. Below are listed common suggestions made for improving the rate complaint process. Although you may have never filed a complaint, we value your opinion. In your opinion, how important, if at all, are each of the following suggestions for improving the rate relief process? (Check one category for each suggestion. If you are unsure, please check don't know.)

Potential Changes to the Rate Relief Process	Extremely Important	Very Important	Moderately Important	Somewhat Important	Not Important	Don't Know <sup>b</sup>
1a. Use of mandatory binding arbitration between shippers and railroads to resolve rate disputes	18.8 ±3.18	39.8 ±3.80	24.1 ±3.26	12.6 ±2.46	4.7 ±1.46	[n=229]
1b. Use of mandatory arbitration with non-binding results	2.0 ±1.32	14.5 ±3.02	18.5 ±3.26	21.5 ±3.46	43.6 ±4.28	[n=319]
2. Increase the use of voluntary binding arbitration between shippers and railroads to resolve rate disputes	13.2 ±2.78	38.7 ±3.86	27.5 ±3.46	11.9 ±2.48	8.7 ±1.96	[n=243]
3a. Lower STB's jurisdictional threshold from the current level of 180 percent of revenue-to-variable cost	18.7 ±3.56	34.3 ±4.36	21.9 ±3.72	13.4 ±3.14	11.8 ±3.04	[n=396]
3b. What jurisdictional threshold would you suggest? _____%						
4. Simplify the STB requirement to prove market dominance by eliminating the product and/or geographic competition criteria	32.2 ±3.66	30.0 ±3.78	27.1 ±3.72	7.4 ±2.12	3.4 ±1.36	[n=298]
5. Reduce or eliminate the complaint fees that shippers must pay in order to file a complaint with the STB	29.5 ±3.54	33.6 ±3.56	21.0 ±3.14	10.4 ±2.22	5.5 ±1.50	[n=222]
6. Shorten STB's time limits for deciding rate relief cases (currently, the guideline is no more than 16 months)	41.9 ±3.70	33.9 ±3.50	17.6 ±2.84	5.2 ±1.66	1.4 ±0.82	[n=206]
7. Other (Please specify) <sup>c</sup>						

**Appendix III  
Survey Response Frequencies**

18. Below are listed some common suggestions made by shippers and others for improving competition in the railroad industry. In your opinion, how important, if at all, are each of the following suggestions for improving competition in the railroad industry? (*Check one category for each suggestion.*)

<b>Potential Changes to Increase Competition in the Railroad Industry</b>		<b>Extremely Important</b>	<b>Very Important</b>	<b>Moderately Important</b>	<b>Somewhat Important</b>	<b>Not Important</b>	<b>Don't Know<sup>b</sup></b>
1.	Require railroads to quote rates for all route "segments" including those subject to "bottleneck" conditions	33.4 ±3.22	37.6 ±3.40	21.2 ±2.94	4.3 ±1.42	3.6 ±1.36	[n=142]
2.	Require STB to grant trackage rights if it is found that competition is not adequate	44.9 ±3.44	36.2 ±3.36	12.4 ±2.30	4.0 ±1.40	2.5 ±1.16	[n=128]
3.	Require railroads to increase rail access for shortline and/or regional railroads	42.3 ±3.46	33.0 ±3.24	15.7 ±2.52	6.7 ±1.82	2.4 ±1.06	[n=133]
4.	Allow shippers to specify the routing of their shipments including interchange points (commonly called open routing)	22.3 ±2.90	27.1 ±3.20	25.2 ±3.12	14.3 ±2.54	11.1 ±2.76	[n=166]
5.	Require STB to grant reciprocal switching at the nearest junction or interchange upon reasonable request of a shipper or railroad	40.4 ±3.44	33.4 ±3.32	15.7 ±2.50	7.2 ±1.82	3.2 ±1.34	[n=143]
6.	Other ( <i>Please specify</i> ) <sup>a</sup> _____ _____ _____						
7.	Other ( <i>Please specify</i> ) <sup>a</sup> _____ _____ _____						

**Appendix III**  
**Survey Response Frequencies**

**QUALITY OF SERVICE PROVIDED  
BY RAILROADS**

This section of the survey deals exclusively with the service that your company has received from the railroads that serve you. When answering these questions, please consider only your bulk grain, coal, chemicals or plastics shipments that your company has made since 1990.

19. Overall, how would you rate the *quality of rail service* your company received in 1990 and 1997 in shipping bulk grain, coal, chemicals or plastics in relation to the rate(s) paid? (Check only one response for each year)<sup>c</sup>

\_\_\_ My company did not use rail service for these products in 1990 or 1997. (Go to **Question 21.**) [3.7  $\pm$ 1.26]

The quality of service your company received...		1990	1997
1.	Far exceeded what was paid	1.1 $\pm$ 0.62	1.6 $\pm$ 0.86
2.	Somewhat exceeded what was paid	8.2 $\pm$ 1.96	4.5 $\pm$ 1.50
3.	Was in line with what was paid.	47.5 $\pm$ 3.54	23.1 $\pm$ 2.98
4.	Was somewhat less than what was paid	28.1 $\pm$ 3.16	26.5 $\pm$ 3.02
5.	Was far less than what was paid	15.2 $\pm$ 2.50	44.3 $\pm$ 3.40
6.	Don't Know <sup>b</sup>	[n=139]	[n=111]

**Appendix III  
Survey Response Frequencies**

20. Please answer the following questions about rail service based on how your company's rail service in shipping bulk grain, coal, chemicals or plastics was in 1997 compared to what it was in 1990. (*Check one for each item.*)

<b>Overall Quality of Service Your Company Received in 1997 Compared to 1990</b>		<b>Much Better</b>	<b>Some-what Better</b>	<b>About the Same as</b>	<b>Some-what Worse</b>	<b>Much Worse</b>	<b>Don't Know/ Does Not Apply<sup>b</sup></b>
1.	Car transit time (amount of time it takes to deliver our commodity to its destination)	4.7 ±1.50	16.5 ±2.84	29.2 ±3.38	20.1 ±2.92	29.5 ±3.22	[n=173]
2.	Car availability during peak periods (if applicable)	4.1 ±1.58	10.8 ±2.54	17.5 ±3.06	29.3 ±3.58	38.2 ±3.90	[n=237]
3.	Car cycle time (for unit trains, amount of time it takes to deliver your commodity to its destination, and return)	4.3 ±1.66	16.1 ±3.06	24.3 ±3.56	25.2 ±3.48	30.1 ±3.58	[n=278]
4.	Car availability in general	3.8 ±1.52	13.2 ±2.76	19.7 ±3.14	34.1 ±3.72	29.2 ±3.60	[n=229]
5.	Condition of cars	5.1 ±1.62	14.2 ±1.78	39.7 ±3.94	29.6 ±3.76	11.5 ±2.60	[n=246]
6.	Consistency of on-time pick up	3.4 ±1.38	9.3 ±2.22	38.1 ±3.56	28.1 ±3.30	21.1 ±2.94	[n=174]
7.	Consistency of on-time delivery	1.3 ±0.92	14.5 ±2.68	26.0 ±3.26	27.4 ±3.26	30.9 ±3.30	[n=178]
8.	Loss and damage experienced	3.0 ±1.34	12.5 ±2.64	71.5 ±3.52	7.8 ±1.98	5.2 ±1.78	[n=230]
9.	Ability of carrier to inform shipper of shipment location at any time (tracing capability)	18.5 ±2.88	34.5 ±3.52	25.4 ±3.16	10.8 ±2.24	10.8 ±2.22	[n=177]
10.	Ability of railroad to meet guaranteed car delivery	4.0 ±1.76	13.3 ±3.04	24.4 ±3.58	27.6 ±3.68	30.8 ±3.72	[n=299]
11.	Other ( <i>Please Specify</i> ) <sup>a</sup>  _____ _____ _____						
12.	<b>Overall</b> quality of rail service my company received	3.7 ±1.34	15.4 ±2.80	18.2 ±2.90	35.0 ±3.50	27.7 ±3.22	[n=184]

### Appendix III Survey Response Frequencies

21. In your opinion, which are the **three** most important changes that should be made to increase the quality of rail service in shipping bulk grain, coal, chemicals or plastics to or from your company? *(Check no more than the three most important changes.)*

1. ☐ Nothing; my service is fine as is.  
*(Go to Question 22)* [4.2 ±1.24]
2. ☐ Improve transit times [45.3 ±3.12]
3. ☐ Increase the number of available cars to meet my needs  
[41.2 ±3.20]
4. ☐ Improve the consistency of on-time delivery of cars to my company  
[66.5 ±3.06]
5. ☐ Improve the consistency of on-time pick-up of cars to be shipped from my company [33.7 ±3.10]
6. ☐ Improve the condition of cars made available [17.0 ±2.60]
7. ☐ Better align rates with service received (I would pay more for better service and/or should pay less for lower quality service)  
[30.4 ±2.94]
8. ☐ Offer guaranteed car delivery programs [10.3 ±1.92]
9. ☐ Honor existing guaranteed car delivery programs [13.6 ±2.30]
10. ☐ Reduce losses and damage  
[3.1 ±1.10]
11. ☐ Other *(Please specify)*<sup>a</sup>

22. Since 1990, has your company made investments in rail-related infrastructure (such as increasing siding capacity) or purchased rail cars either as a condition for continued rail service, to improve service from a railroad, or to obtain more favorable rates from a railroad? *(Check one)*

1. ☐ Yes--> *(Continue)* [58.5 ±3.18]
2. ☐ No --> *(Go to Question 25)*  
[n=312<sup>b</sup>]

23. Which, if any, of the following investments did your company make either as a condition for continued rail service, to improve service from a railroad, or to obtain more favorable rates from a railroad? *(Check all that apply)*

1. ☐ Increased the number of cars that existing sidings could hold (by extending or expanding the sidings), including accommodating unit trains [59.1 ±4.12]
2. ☐ Built new sidings [45.8 ±4.20]
3. ☐ Increased the ability of sidings to handle heavier trains [24.1 ±3.64]
4. ☐ Reconfigured sidings to improve rail car flow [28.5 ±3.82]
5. ☐ Increased product storage capacity (e.g., increased size of bulk storage at plant) [56.6 ±4.10]
6. ☐ Improved ability to load cars quicker from storage (not including labor investments) [62.3 ±3.84]
7. ☐ Added or improved capacity to clean and/or repair rail cars [11.9 ±2.58]
8. ☐ Built track and other infrastructure to connect to another railroad [6.0 ±1.80]
9. ☐ Purchased or leased rail cars or locomotives [50.8 ±4.08]
10. ☐ Leased additional track [21.5 ±3.36]
11. ☐ Other *(Please specify)*<sup>c</sup>

### Appendix III Survey Response Frequencies

24. Since 1990, about how much money did your company spend for investments made either as a condition for continued rail service, to improve service from a railroad, or to obtain more favorable rates from a railroad? (*Check one*)

1. ☐ \$100,000 or less [15.6 ±3.34]
2. ☐ \$100,001 - \$500,000 [24.9 ±3.92]
3. ☐ \$500,001 - \$1 million [15.5 ±3.18]
4. ☐ \$1,000,001 - \$5 million [22.3 ±3.72]
5. ☐ \$5,000,001 - \$10 million [7.0 ±2.12]
6. ☐ More than \$10 million [14.6 ±2.70]
7. ☐ Don't know [n=345<sup>b</sup>]

#### Railroad Service Incentives and Penalties

25. For the bulk grain, coal, chemicals or plastics shipped under contract (excluding guaranteed car delivery or auction programs) with a railroad since 1990, has your company made **incentive payments** for better than expected service to one or more railroads? (*Check one*)

1. ☐ Yes--> (*Continue*) [5.2 ±1.48]
  2. ☐ No--> (*Go to Question 28*) [94.8 ±1.48]
  3. ☐ Does not apply--> (*Go to Question 28*)
  4. ☐ Don't know, cannot determine --> (*Go to Question 28*)
- [n=145<sup>b</sup> for options 3 and 4 combined.]

26. In which of the following years did you make **incentive payments**? (*Check all that apply*)

#### Incentive Payments Made In:

1. ☐ 1990 [25.5 ±12.12]
2. ☐ 1991 [28.6 ±13.58]
3. ☐ 1992 [28.6 ±13.58]
4. ☐ 1993 [25.5 ±12.24]
5. ☐ 1994 [39.6 ±14.66]
6. ☐ 1995 [56.8 ±14.86]
7. ☐ 1996 [74.5 ±12.0]
8. ☐ 1997 [75.0 ±12.72]
9. ☐ Don't know<sup>a</sup>

27. In general, for the **incentive payments** made, what was the value of these payments in relation to the annual value of the contract? (*Check one*)

#### Percentage of Contract Value:

1. ☐ 1-10%<sup>a</sup>
2. ☐ 11-20%<sup>a</sup>
3. ☐ 21-30%<sup>a</sup>
4. ☐ 31-40%<sup>a</sup>
5. ☐ 41-50%<sup>a</sup>
6. ☐ More than 50%<sup>a</sup>
7. ☐ **Not applicable**-- Incentive payments assessed are not calculated based on annual value of contracts (*Please explain*)<sup>a</sup>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. ☐ Don't know<sup>a</sup>

### Appendix III Survey Response Frequencies

28. For the bulk grain, coal, chemicals or plastics shipped under contract (excluding guaranteed car delivery or auction programs) with a railroad since 1990, has your company ever **assessed penalties** to one or more railroads for worse than expected service and/or not meeting contract terms? (*Check one*)

1. ☐ Yes--> (*Continue*) [12.2 ±1.88]  
 2. ☐ No--> (*Go to Question 31*) [73.4 ±2.78]  
 3. ☐ Does not apply--> (*Go to Question 31*) [9.8 ±2.00]  
 4. ☐ Don't know, cannot determine--> (*Go to Question 31*) [4.5 ±1.32] [Missing=22]

29. For the **penalties assessed**, in which of the following years were these actions taken? (*Check all that apply*)

**Penalties Assessed In:**

1. ☐ 1990 [4.9 ±3.40]  
 2. ☐ 1991 [6.2 ±3.76]  
 3. ☐ 1992 [8.6 ±4.36]  
 4. ☐ 1993 [14.8 ±5.40]  
 5. ☐ 1994 [23.5 ±6.60]  
 6. ☐ 1995 [27.0 ±7.10]  
 7. ☐ 1996 [40.4 ±8.08]  
 8. ☐ 1997 [80.4 ±6.50]  
 9. ☐ Don't know [6.0 ±4.28]

30. In general, for the **penalties assessed**, what was the value of these penalties in relation to the annual value of the contract? (*Check one*)

**Percentage of Contract Value:**

1. ☐ 1-10% [55.4 ±8.10]  
 2. ☐ 11-20% [11.9 ±4.94]  
 3. ☐ 21-30% [7.0 ±4.32]  
 4. ☐ 31-40% [0.0 ±0.00]  
 5. ☐ 41-50% [0.0 ±0.00]  
 6. ☐ More than 50% [0.0 ±0.00]  
 7. ☐ **Not applicable--** Penalties assessed are not calculated based on annual value of contracts (*Please explain*)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 [25.7 ±7.28]



---

**Appendix III**  
**Survey Response Frequencies**

31. To what extent have mergers or consolidation of railroads since 1990 affected the service that your company has received **(except for the Union Pacific/Southern Pacific merger)**? *(Check one)*

Service levels are . . .

- 1. ☐ Much better [2.0 ±1.06]
- 2. ☐ Somewhat better [10.5 ±2.26]
- 3. ☐ Neither better or worse [37.5 ±3.52]
- 4. ☐ Somewhat worse [36.1 ±3.42]
- 5. ☐ Much worse [14.0 ±2.54]
- 6. ☐ Not Applicable -- No mergers or consolidations affecting my company have occurred [0.0 ±0.00]
- 7. ☐ Don't know [n=173<sup>b</sup>]

32. To what extent has the **Union Pacific/Southern Pacific merger** affected the service your company has received? *(Check one)*

Service levels are . . .

- 1. ☐ Much better [<1 ±0.84]
- 2. ☐ Somewhat better [1.0 ±0.90]
- 3. ☐ Neither better or worse [13.8 ±3.08]
- 4. ☐ Somewhat worse [25.1 ±3.76]
- 5. ☐ Much worse [59.3 ±4.18]
- 6. ☐ Not Applicable -- not served by Union Pacific/Southern Pacific Railroad [0.0 ±0.00]
- 7. ☐ Don't know [n=338<sup>b</sup>]

**Appendix III**  
**Survey Response Frequencies**

**COMMENTS**

33. Please feel free to share any other information that you wish with us regarding the STB rate relief process, railroad shipping rate and service issues, or the questions in this questionnaire. Please use the following space or attach additional sheets as necessary.

\_\_\_\_\_  
/ / / / /

We may need to contact you to fully understand your responses to this questionnaire. We will ultimately destroy the link between your responses and the information below. Please complete the following information for the person we should contact for clarification:

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Telephone Number: (        ) \_\_\_\_\_ -- \_\_\_\_\_

**Thank you for your cooperation and assistance! This concludes the questionnaire. Please return it in the postage-paid envelope provided.**

**Table III.1: Survey  
Question 5**

We asked survey respondents to indicate the percentage of their shipments made using various transportation modes. Specifically,

- In 1997, about what percentage of your company's shipments of bulk grain, coal, chemicals or plastics went by the following modes of

**Appendix III**  
**Survey Response Frequencies**

transportation? (Enter percent; Please make sure your responses total 100%.)

We selected four categorical ranges for the question, and counted the number of responses that fit into each category. Table III.1 shows the percentage of respondents whose answers fit each category.

**Table III.1: Percentage of Shippers Using Various Transportation Modes, 1997 (Survey Question 5)<sup>c</sup>**

Transportation Mode	0 - 25 percent	26 - 50 percent	51 - 75 percent	76 - 100 percent	Missing
Class I railroad	54.5 +3.20	10.5 +2.00	13.1 +2.20	21.9 +2.58	[n=42]
Short-line or regional railroad	90.2 +2.00	3.6 +1.16	1.5 +0.88	4.6 +1.48	[n=84]
A combination of class I and short-line or regional railroads	78.6 +2.78	9.4 +1.92	5.0 +1.50	7.0 +1.80	[n=69]
Semi-tractor or other truck	46.4 +3.16	22.2 +2.74	11.9 +2.08	19.4 +2.56	[n=24]
Inland waterway (including barges)	94.7 +1.50	3.1 +1.16	1.8 +0.96	1 +0.28	[n=84]
Deep water great lakes vessel	100 + 0.00	0 +0.00	0 +0.00	0 +0.00	[n=91]
Ocean	98.3 +0.76	<1 +0.50	<1 +0.36	<1 +0.44	[n=83]
Air	100 +0.00	0 +0.00	0 +0.00	0 +0.00	[n=91]
Intermodal (a combination of railroad and other modes)	98.7 +0.56	<1 +0.40	<1 +0.30	<1 +0.28	[n=83]
Intermodal (a combination of modes not including rail)	99.1 +0.68	<1 +0.48	<1 +0.22	<1 +0.44	[n=84]
Other	98.9 +0.56	<1 +0.44	<1 +0.20	<1 +0.30	[n=86]

Source: GAO's survey of railroad shippers.

**Table III.2: Survey Question 6**

We asked survey respondents to indicate the average number of loaded out-bound rail shipments. they had made since 1990. Specifically,

- Since 1990, on average, how many **loaded** rail cars has your company used for out-bound shipments of bulk grain, coal, chemicals or plastics per year? (Enter Number)

**Appendix III**  
**Survey Response Frequencies**

**Table III.2: Average Annual Out-bound Rail Shipments by Commodity (Survey Question 6)<sup>c</sup>**

Commodity	Average annual rail cars
Grain	4,546 +1,288
Coal	62,962 +8,495
Chemicals/plastics	7,727 +944

Source: GAO's survey of railroad shippers.

**Table III.3: Survey Question 7**

We asked survey respondents to indicate the percentage of their rail shipments made using rail cars owned or leased by their company. Specifically,

- Since 1990, on average, what percentage of your annual out-bound shipments (that you identified in the previous question) of bulk grain, coal, chemicals or plastics were shipped in rail cars owned or leased (except leased from a railroad) by your company? (Enter percent, if none, enter 0)

We selected four categorical ranges for the question, and counted the number of responses that fit into each category. Table III.3 shows the percentage of respondents whose answers fit each category.

**Table III.3: Percentage of Annual Rail Shipments Using Company-owned Rail Cars (Survey Question 7)<sup>c</sup>**

	0 - 25 percent	26 - 50 percent	51 - 75 percent	76 - 100 percent	Missing
Average annual out-bound shipments in owned or leased rail cars	75.2 +2.30	4.3 +1.28	3.6 +1.12	17.0 +1.82	[n=24]

Source: GAO's survey of railroad shippers.

**Table III.4: Survey Question 8**

We asked survey respondents to indicate the percentage of their shipments that were made using contract versus tariff rates. Specifically,

- Since 1990, what percentage of each of the following rate setting methods (contract or published tariff rate) were used to set the freight rates of your annual out-bound shipments? (Enter percent; if none, enter '0')

We selected four categorical ranges for the question, and counted the number of responses that fit into each category. Table III.4 shows the percentage of respondents whose answers fit each category.

**Table III.4: Percentage of Shipments Using Contract Rates or Published Tariff Rates Since 1990 (Survey Question 8)<sup>c</sup>**

	<b>0 - 25 percent</b>	<b>26 - 50 percent</b>	<b>51 - 75 percent</b>	<b>76 - 100 percent</b>	<b>Missing</b>
Contract rate	47.6 +3.20	8.1 +1.94	5.8 +1.64	38.5 +2.96	[n=91]
Tariff	41.3 +3.00	8.4 +1.92	4.4 +1.44	45.9 +3.16	[n=69]

Source: GAO's survey of railroad shippers.

**Table III.5: Survey Question 9**

We asked survey respondents to indicate the percentage of their shipments made that were exempt from federal rate regulation. Specifically,

- Of the published tariff or public rate shipments identified in question 8 what percentage was exempt from regulation — that is, commodities, or classes of transportation (such as box car) that have been granted exemption by STB or its predecessor the Interstate Commerce Commission (ICC) from economic regulation? (Enter Percent)

We selected four categorical ranges for the question, and counted the number of responses that fit into each category. Table III.5 shows the percentage of respondents whose answers fit each category.

**Table III.5: Percentage of Public Tariff Shipments Exempt From Federal Regulation (Survey Question 9)<sup>c</sup>**

	<b>0 - 25 percent</b>	<b>26 - 50 percent</b>	<b>51 - 75 percent</b>	<b>76 - 100 percent</b>	<b>Missing</b>
Percent of shippers responses in each category	87.7 +2.86	1.8 +1.22	<1 +0.74	9.8 +2.58	[n=294]

Source: GAO's survey of railroad shippers.

**Table III.6: Survey Question 10**

We asked survey respondents to indicate the percentage of their shipments that were limited to a single railroad from origin to destination. Specifically,

- Consider the out-bound movements of bulk grain, coal, chemicals, or plastics that your company made by railroad. About what percentage, if any, of these shipments could only go from origin to destination using a single railroad in 1997 as compared to 1990? (Enter Percent, if none, enter '0')

We selected five categorical ranges for the question, and counted the number of responses that fit into each category. Table III.6 shows the percentage of respondents whose answers fit each category.

**Table III.6: Percentage of Rail Shippers Who Indicated That Their Shipments Went From Origin to Destination Using Only One Railroad, 1990 and 1997 (Survey Question 10)<sup>c</sup>**

Percentage of shipments using one railroad from origin to destination	0 percent	1 - 20 percent	21 - 40 percent	41 - 60 percent	61 - 100 percent	Missing
1990	26.6 +2.98	10.6 +1.86	10.1 +2.06	9.2 +1.92	43.4 +3.38	[n=105]
1997	25.8 +2.94	8.7 +1.84	9.3 +1.90	7.7 +1.74	48.5 +3.38	[n=101]

Source: GAO's survey of railroad shippers.

## Chapter 4 Analysis Estimates and Sampling Error

Tables III.7 through III.9 present the sampling error associated with the estimates we present in Chapter 4. Our estimates for coal, chemical and plastics shippers do not include sampling error because we sent our survey to 100 percent of these shippers in our universe. In addition, the estimates shown in tables III.7 through III.9 differ from the data presented in questions 15, 17 and 18 above because we have collapsed certain categories for our analysis.

**Appendix III**  
**Survey Response Frequencies**

**Table III.7: Percentage of Rail Shippers Who Believed That a Barrier Was a Major or Moderate Reason for Not Filing a Rate Complaint (Table 4.1)**

<b>Barrier<sup>a</sup></b>	<b>Total</b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>
Legal costs associated with filing outweigh the benefits	75.9 +3.30	78.1 +4.12	65.1	75.8
Rate complaint process is too complex	76.5 +3.30	77.6 +4.20	73.4	74.6
Rate complaint process takes too long	74.1 +3.48	73.6 +4.48	85.9	64.5
Stand-alone cost model is too costly to prepare	71.7 +3.58	72.3 +4.56	76.2	64.5
Railroad will most likely win case	69.4 +3.70	68.8 +4.74	80.6	61.3
Getting information from railroads is too difficult	66.9 +3.72	69.3 +4.68	67.2	54.8
Consulting costs are too high	66.5 +3.74	68.2 +4.72	54.7	64.5
Discovery requests from railroad difficult	65.6 +3.78	67.5 +4.80	59.0	62.9
Fear of reprisal from railroads	60.0 +3.86	64.4 +4.88	54.7 4	3.6
Filing fee too costly	56.6 +3.90	62.1 +4.90	43.6	41.9
Other parts of the process are too costly	39.0 +4.42	40.5 +5.58	27.9	40.8

<sup>a</sup>Each percentage represents rail shippers who expressed an opinion regarding a particular barrier. We estimate that the total number of shippers eligible to answer this question is 531. Some shippers did not express an opinion for some barriers.

**Appendix III  
Survey Response Frequencies**

**Table III.8: Percentage of Rail Shippers That Believe Suggested Changes for Improving the Rate Complaint Process Were Extremely to Very Important (Table 4.2)**

<b>Suggestions for improving the STB's rate complaint process</b>	<b>Total<sup>a</sup></b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Missing</b>
Shorten STB's time limits for deciding rate complaint cases	75.9 +3.20	76.3 +4.12	77.1 +6.22	72.8 +6.60	n=206
Reduce or eliminate complaint filing fees	63.1 +3.62	68.4 +4.58	41.9 +7.76	56.2 +7.42	n=222
Eliminate product & geographic competition criteria	62.2 +3.98	57.0 +5.46	82.1 +5.80	63.0 +7.56	n=298
Use mandatory binding arbitration	58.5 +3.74	66.7 +4.60	29.6 +7.68	41.3 +7.60	n=229
Lower revenue to variable cost ratio	52.9 +4.56	50.8 +6.34	66.7 +7.72	46.6 +8.76	n=396
Use voluntary binding arbitration	51.9 +3.90	58.5 +4.86	30.2 +7.80	37.0 +7.56	n=243
Use mandatory nonbinding arbitration (mediation)	16.4 +3.22	20.2 +4.26	4.80 +4.06	7.60 +4.36	n=319

<sup>a</sup>Each percentage represents rail shippers who expressed an opinion regarding a particular suggestion. Some shippers did not express an opinion for some suggestions.

**Table III.9: Percentage of Rail Shippers Who Believed That Increasing Aspects of Rail Competition Was Extremely to Very Important (Table 4.3)**

<b>Suggestions to increase competition</b>	<b>Total<sup>a</sup></b>	<b>Grain shippers</b>	<b>Coal shippers</b>	<b>Chemicals and plastics shippers</b>	<b>Missing</b>
Require STB to grant trackage rights to competing railroads	81.2 +2.76	79.1 +3.62	86.1 +4.82	86.4 +4.88	n=128
Increase access for short line railroads	75.2 +3.02	74.5 +3.88	75.0 +6.14	78.6 +5.80	n=133
Require STB to grant reciprocal switching agreements	73.9 +3.06	71.6 +4.02	73.1 +6.22	84.4 +5.10	n=143
Overturn STB's "bottleneck" decision	71.0 +3.24	67.0 +4.26	83.5 +5.16	77.5 +5.92	n=142
Allow shippers to specify routing	49.4 +3.56	45.1 +4.64	42.5 +7.16	73.3 +6.24	n=166

<sup>a</sup>Each percentage represents rail shippers who expressed an opinion regarding a particular option. Some shippers did not express an opinion for some options.



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Endnotes:

<sup>a</sup>Due to the low number of responses to this question, we are either unable to generalize to the universe, or unable to report for reasons of confidentiality.

<sup>b</sup>Includes missing responses.

<sup>c</sup>We estimate that a total of 709 shippers were eligible to answer this question. Not all shippers chose to answer the question.

# Survey of U.S. Class I Railroads

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In order to obtain the major U.S. railroads' views of the Surface Transportation Board's rate relief process, we mailed the class I railroads a survey similar to the survey we mailed to shippers (See app. III). The class I railroads determined that it would be appropriate for the Association of American Railroads (AAR) to respond to our questions regarding changes to the process. Therefore, AAR answered questions 6 and 7 of our survey. The remaining questions dealt with the railroads' experiences using the process during any rate complaint cases involving movements on their lines. Four of the nine class I railroads we surveyed responded to this set of questions. The information provided by the railroads augmented the information we developed from reviewing the Board's case files. However, because of the low response rate and the nature of the information provided, there was not sufficient information to present it in summary form in this appendix. We have provided a copy of the survey we mailed to the class I railroads for reference purposes.

**Appendix IV**  
**Survey of U.S. Class I Railroads**



**Craig F. Rockey**  
Sr. Assistant Vice President

October 26, 1998

Ms. Phyllis F. Scheinberg  
Associate Director, Transportation Issues  
United States General Accounting Office  
Washington, DC 20548

Dear Ms. Scheinberg:

The Association of American Railroads is providing general comments on behalf of the Class I railroads in response to the GAO's September 22, 1998 survey to Class I railroads regarding the Surface Transportation Board's (STB) railroad rate regulation process.

The GAO's review of the STB's rate relief process comes at a time when certain shipper interests are calling for Congress and/or the STB to modify the existing scheme of economic regulation of railroads. Indeed, Senators Dorgan, Burns, Rockefeller, and Roberts – at whose request the GAO is conducting its investigation of rail rate and service issues – have themselves introduced legislation that would substantially alter the current system of railroad economic regulation.

In enacting the Staggers Rail Act of 1980, Congress recognized that railroads faced intense competition from trucks and other modes for most categories of freight traffic but that prevailing pervasive regulation precluded railroads from earning revenues sufficient to maintain and replace their infrastructure and thus thwarted the industry's ability to compete. Survival of the railroad industry required a new regulatory scheme that allowed railroads to establish their own routes, tailor their rates to market conditions and differentiate rates on the basis of demand.

The reforms engendered by Staggers have been a decisive success. The flexibility it provided has enabled railroads to rationalize and upgrade their systems, reinvest in productive rail infrastructure, generate higher levels of service, dramatically increase productivity, and improve safety – while at the same time sharply lowering rates for shippers. Critically, the regulatory scheme devised by Congress relies on competition in the marketplace to govern the vast majority of rail rates and service. The experience since Staggers demonstrates that there is abundant competition in unregulated freight transportation markets which has allowed this congressional objective to be fulfilled.

For this reason, the AAR believes that the current regulatory regime – under which competition and market forces are the determining factors in setting rail rates and service

standards in most cases, with maximum rate and other protections available to rail customers who truly need them – is, by and large, an appropriate one. It strikes a reasoned balance between providing railroads the freedom to compete effectively in the marketplace and providing shippers the means necessary to combat actual abuse of railroad market power and anti-competitive railroad behavior.

The railroad industry does not maintain that the existing mix of competition and regulation is necessarily perfect. It may well be that particular elements of the current regime can be improved, and the rail industry has been working hard in recent months with shippers and others to identify areas where improvement can be made. Recent agreements with the National Grain and Feed Association and the Association of Short Line and Regional Railroads (see related attachments), and the willingness of the railroad industry to re-examine critical regulatory techniques and procedures, bear witness to this point. Nevertheless, the experiences and performance of the rail industry before and since passage of the Staggers Act make it abundantly clear that a return to pervasive and heavy-handed economic regulation of railroads – in whatever form – would be a colossal mistake.

Proposals to alter the current system of economic regulation of railroads include a variety of different approaches, ranging from the relatively benign (e.g., encouraging the increased use of voluntary arbitration to settle railroad-shipper disputes) to the radical (e.g., mandated forced access on all railroad rights-of-way). Few of these proposals represent truly new thinking; most have been advocated, and rejected for good reason, at one time or another in the past. (Many of these proposals were explicitly rejected by Congress as recently as 1995 during deliberation of the Interstate Commerce Commission Termination Act.) The end result of most of these proposals is the same: they would have the government force railroads to lower their rates to certain favored shippers at the expense of other shippers, rail investors and the public at large. And if the favored shippers had their way, the government would take such action without requiring any showing of anti-competitive conduct by railroads, without showing that railroads had actually abused their market power, without showing that railroad profits are excessive, and without any opportunity for cost coverage or ability to sustain rail investment.

The railroad industry has, in recent months, argued in great detail against many of the extreme proposals advocated by those who seek increased railroad regulation. It would be beyond the scope of this letter to repeat those detailed arguments here. Instead, the following brief sections summarize some of the major arguments against several of the most commonly-advocated elements of railroad reregulation. Attached to this letter are copies of recent, voluminous rail industry submissions to the STB relating to rail price and service issues which contain much more detailed explanations of the railroads' positions.

**The “Bottleneck” Decision**

Among the most common proposals to reregulate the rail industry is legislative reversal of the STB's 1996 “bottleneck” decision. In that decision, the STB generally upheld a long-standing policy that shippers could not compel railroads that singly-serve an origin or destination to quote a local rate to a nearby junction and then challenge the reasonableness of that local “bottleneck” rate.

Reversal of the bottleneck decision would gut the basic concept of demand-based, differential pricing that has made the railroads' recovery over the past two decades possible. The Staggers Act explicitly recognizes differential pricing as essential in the railroad industry, and the legitimacy of the theory and application of this pricing strategy has repeatedly been recognized by the STB and the courts.

Reversal of the bottleneck decision, which would effect nothing less than a pure government-sanctioned revenue transfer from railroads to shippers, would once again make government regulators the primary determiner of rail rates, and would guarantee that railroads could not earn revenues sufficient to cover the cost of their services. The consequence would be a new era of capital starvation and ever-worsening rail service.

For details, see *Comments of the Association of American Railroads, Docket No. 41242, 41295, and 41626, October 15, 1996* (partial copy)

#### **Singly-Served Shippers and Receivers**

Some rail shippers and their allies claim that market dominance should be presumed to exist whenever an individual shipper or receiver is served by a single railroad. Such a presumption rests on the fallacy that service to a single shipper by a single railroad is equivalent to monopolization, regardless of whether there is even a contention (much less an adjudicatory finding) of anti-competitive conduct by that railroad.

As a point of fact, railroads face extensive competition for the vast majority of their business, including cases where a shipper is served by only one railroad. Such competition can include (but is not limited to) intramodal competition (or the threat thereof via options such as build-outs); intermodal competition; product and geographic competition; and countervailing shipper power. To pretend these factors don't exist is to be disingenuous in the extreme.

Of course, where there is an absence of effective competition or where a railroad is found to have abused its market power or engaged in anti-competitive behavior, the STB already is empowered to prescribe maximum rates or take certain other reparatory actions.

More information on this point can be found in *Comments of the Association of American Railroads, STB Ex Parte No. 575, Review of Access and Competition Issues, March 26, 1998*.

#### **Product and Geographic Competition**

The AAR understands that the primary impetus for a recent proceeding by the STB regarding product and geographic competition<sup>1</sup> is the claim by shippers that it is unduly burdensome to litigate rate reasonableness cases before the STB. Some shippers allege that burdens related to product and geographic competition are especially severe obstacles to filing rate complaints. Consequently, these shippers claim that product and geographic

<sup>1</sup> STB Ex Parte No. 627, Market Dominance Determinations – Product and Geographic Competition.

competition should be ignored – assumed simply not to exist – in rate reasonableness cases.

It is beyond serious contention that product and geographic competition are effective constraints on rail rates in numerous markets. To pretend otherwise would lead to the nonsensical conclusion that a utility that obtains coal from two or more different mines via two or more different railroads can claim that each railroad is market dominant, since only one railroad serves any given mine. Indeed, a core premise of the economics of competition is that market power can be constrained by a range of competitive forces; thus, the arbitrary exclusion of entire categories of competitive forces in market dominance determinations would be contrary to the fundamental economics of competition.

Nevertheless, the AAR agrees that procedural obstacles and the cost of litigation should not be barriers to obtaining regulatory relief when such relief is warranted. Therefore, the AAR and its member railroads stand ready to assist in the adoption of more efficient procedures that will make the statutory remedies afforded to rail customers more meaningful. The AAR has already suggested appropriate ways to manage the procedural burdens of market dominance proceedings without distorting the underlying standard. In addition, the STB recently acted to alleviate the burden borne by shippers in market dominance proceedings.

For more information, refer to *Comments of the Association of American Railroads: Market Dominance Determinations – Product and Geographic Competition, STB Ex Parte No. 627, May 29, 1998* and *Reply Comments of the Association of American Railroads: Market Dominance Determinations – Product and Geographic Competition, STB Ex Parte No. 627, June 29, 1998*.

#### **Forced Access**

Forced access as proposed for the railroad industry is generally defined as the granting of mandatory trackage rights to a competing carrier over the tracks of an owning railroad at rates and according to terms determined by a regulator.

In contrast to many reregulation advocates who believe that forced access is an appropriate remedy in any case where a shipper is served by a single railroad, the AAR believes that access remedies should be limited to those cases in which actual competitive abuse can be demonstrated. In these limited circumstances, the STB has sufficient tools and discretion under the existing regulatory scheme to address the harm and craft appropriate remedies. These access tools were carefully developed to implement existing rail transportation policy. That policy relies on competition in the marketplace to regulate price and service and create an environment conducive to free market competition through private investment and initiative. But that policy does not seek to manufacture additional competition through regulatory intervention, as proponents of forced access would do. Indeed, attempts to artificially create competition by regulatory fiat are decidedly anti-competitive and inconsistent with a free market.

Forced access in the rail context would deny a capital intensive, high fixed cost industry an opportunity to cover fixed costs and earn adequate returns. It would undo the efficiency and productivity benefits realized by railroads and shippers alike in the post-Staggers era, while introducing an incredibly complex system of regulatory control over rail pricing, service and operational issues.

More information on this point can be found in *Report of the Association of American Railroads on Railroad/Shipper Discussions Relating to Competitive Access and Revenue Adequacy*, STB Ex Parte No. 575, July 17, 1998 and *Comments of the Association of American Railroads*, STB Ex Parte No. 575, Review of Access and Competition Issues, March 26, 1998.

#### **The Revenue Adequacy Standard**

Many of those who advocate reregulation of railroads contend that railroads could sustain rate reductions because they are already making too much money. The railroads (and the investment banking community that provides needed capital to the industry) do not see how an industry which is not earning competitive returns on its assets – as determined each year by the STB in its revenue adequacy determinations – can be viewed as making too much money. Reregulation advocates prefer to solve this dilemma by simply eliminating the revenue adequacy standard, or by modifying it in ways that would guarantee a more favorable result.

The basic objective of the revenue adequacy measure is to determine whether a railroad is earning enough to cover all costs of efficient operation, including a competitive return on capital. While the AAR is confident that the current measure – rate of return on net investment compared to the rail industry's current cost of capital – is proper, it agrees that there may be more than one way to perform the calculations. In fact, the AAR supports the STB's proposal for a panel of three neutral economists to examine the current revenue adequacy standard as well as other alternatives for measuring a railroad's financial health. Unfortunately, shippers' representatives have so far refused to proceed with the selection of panel members. Railroads cannot accept a vague, open-ended standard, as some shippers would prefer, that would have the STB consider "all pertinent financial indicators" in determining revenue adequacy. Such a standard would offer no guidance and no predictability.

More information on this point can be found in *Report of the Association of American Railroads on Railroad/Shipper Discussions Relating to Competitive Access and Revenue Adequacy*, STB Ex Parte No. 575, July 17, 1998.

#### **The STB's Jurisdictional Threshold**

Under current law, the STB can judge the reasonableness of the rate for a particular rail movement only if the railroad is first shown to be "market dominant." Currently, market dominance can be found if a railroad faces no effective competition and the revenue-to-variable-cost ratio (R/VC) for the traffic exceeds 180 percent. Some shipper proposals would substantially alter the current system by presuming market dominance any time a shipper was served by only one railroad and the R/VC exceeded 180 percent.

The rationale behind such a proposal is the false notion that it is an abuse of market power for a railroad to charge higher rates to some shippers than to others. In general, railroads do charge higher rates to shippers who are willing to pay more, including those willing to pay more because they have fewer options. But such “differential” or “demand-based” pricing is not an abuse of market power. Indeed, it is a pricing technique common throughout U.S. industry. Only by pricing in accordance with the varying demands for rail service (with regulatory ceilings on the maximum level) can railroads have the opportunity to recover their full costs and maintain the viability of the nation’s rail system.

Equally false is the notion that an R/VC of 180 percent (or a level even less than that) can serve as a reasonable upper limit on rates. In 1996, for example, if the revenue generated from movements with an R/VC above 180 percent was reduced so that the R/VC for those movements was no more than 180 percent, the rail industry’s total revenue would have fallen by \$4.1 billion, or 11 percent. All else being equal, the \$4.1 billion revenue reduction would have completely wiped out the industry’s net income of \$3.9 billion that year.

No industry can sustain itself if it cannot produce income sufficient to provide for current and future needs. Yet no proponent of setting maximum rates at an R/VC of 180 percent or lower has explained how the resulting enormous revenue shortfall could be made up. It certainly could not be made up from lower margin traffic. That traffic is the most sensitive to price fluctuations – and is most readily diverted to other modes of transportation. Likewise, no one has so much as offered to explain how a revenue-starved rail industry could continue to make the heavy infrastructure investments necessary for an efficient and safe national rail network.

For details, see *Comments of the Association of American Railroads, Docket No. 41242, 41295, and 41626, October 15, 1996.*

#### **Expedited Relief for Service Inadequacies**

The AAR supports the issuance of an STB rule clarifying the right of shippers to secure expedited emergency relief for clearly inadequate service. The challenge is to properly define the conditions under which temporary service remedies should be available.

The AAR believes that the standard for relief under the proposed rule should be a major, sustained decline in service, measured by comparing an appropriate testing period with an appropriate base period. In deciding whether there has been a service decline, the STB should be sensitive to the railroads’ capacity constraints and normal variations that are inherent in rail service. By no means should dissatisfaction by a shipper with a railroad’s service in and of itself justify the trigger of emergency relief.

For details, see *Comments of the Association of American Railroads, Ex Parte No. 628 – Expedited Relief for Service Inadequacies, June 15, 1998* and *Reply of the Association of American Railroads, Ex Parte No. 628 – Expedited Relief for Service Inadequacies, July 15, 1998.*



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**Appendix IV**  
**Survey of U.S. Class I Railroads**

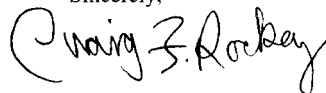
The AAR and its members are keenly aware of the service problems that plagued the industry over the last year and that have acted as a catalyst for the rate and service discussions and investigations now underway. Railroads are committed to addressing those problems through service recovery plans, by hiring additional personnel and by accelerating investments in both equipment and plant. And the railroad industry is committed to sincere and productive participation in regulatory and extra-regulatory initiatives concerned with service, regulatory, and other areas of rail operations.

But it is absolutely critical that regulators and legislators not overreach. The current regime balances competition with regulation in a way that protects shippers from abuse while allowing railroads to stand or fall based on their response to the competitive pressures of the free market. Unfortunately, many of the proposals to reregulate the rail industry would replace the current system with one in which regulation would be far more costly and pervasive, and far less effective.

This letter does not attempt to provide an exhaustive discussion of the many issues contained in questions 4-7 of your September 22, 1998 questionnaire. However, the high-profile issues are highlighted herein and the accompanying submissions provide considerable depth in explaining the rail industry positions.

If you desire additional information on these or any other rail service and rate matters, please contact me.

Sincerely,



Craig F. Rockey

cc: Richard A. Jorgenson  
Deena D. Richart  
David R. Lehrer

**U.S. GENERAL ACCOUNTING OFFICE**  
**Survey of Railroads Regarding Surface Transportation Board's**  
**Freight Rate Relief Process**

/ \_ / \_ / \_ / \_ /

**INTRODUCTION**

The U.S. General Accounting Office (GAO), an agency which reviews federal programs, has been asked by the Congress to conduct a study of the Surface Transportation Board's (STB) maximum rate relief process.

As part of this review, we are conducting a survey of Class 1 railroads that ship freight in the continental United States. The goal of the survey is to obtain your organizations' perceptions of the STB's maximum rate relief process. We are sending a similar questionnaire to railroad shippers, and your responses will be analyzed in conjunction with those provided by shippers.

Your cooperation in completing this questionnaire is critical to our review. We ask that you complete our questionnaire so that we will have the benefit of your opinions and experiences when preparing our report to our requestors.

**INSTRUCTIONS**

Many questions in this questionnaire ask for information in a historical context. If your railroad has merged with another railroad in recent years, please answer each question with respect to your railroad AND any other railroads that have merged with your company during the specified timeframe.

Please complete the questionnaire and return it to the address below within 10 working days. We have provided a postage-paid business reply envelope to facilitate the

return of your questionnaire. In the event that the return envelope is misplaced, please send your completed questionnaire to:

U.S. General Accounting Office  
Attn: David Lehrer  
200 W. Adams, Suite 700  
Chicago, IL 60606

If you have any questions, please call David Lehrer toll free at (800) 333-4524 or Luann Moy at (202) 512-6852.

Appendix IV  
Survey of U.S. Class I Railroads

**DEFENDING RATE COMPLAINTS  
BEFORE THE SURFACE  
TRANSPORTATION BOARD**

1. Since 1990, has your railroad been involved in a railroad freight complaint before the STB or its predecessor the Interstate Commerce Commission (ICC)? *(Check One)*

1. ☐ Yes *(Continue.)*

2. ☐ No ***(Go to question 5.)***

2. If yes, in how many complaints has your railroad been named? *(Enter Number)*

\_\_\_\_\_ Number of rate complaints in which your railroad has been involved.

3. If your railroad has been involved in a railroad freight rate complaint since 1990, what was the outcome of the complaint? **Note: If more than one, please indicate the number of cases that fall into each category.** *(Check one or enter number, if applicable)*

1. \_\_\_\_\_ Process is still ongoing

2. \_\_\_\_\_ Found primarily in your railroad's favor

3. \_\_\_\_\_ Dismissed at your request.

4. \_\_\_\_\_ Found primarily in shipper's favor

5. \_\_\_\_\_ Dismissed at shipper's request.

6. \_\_\_\_\_ Other *(Please Specify)*

\_\_\_\_\_

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**Appendix IV**  
**Survey of U.S. Class I Railroads**

4. If your railroad has been involved in a rate complaint since 1990, about how much did the complaint process cost you? Please consider costs such as legal costs, consultants, and internal costs. **Note: Please indicate a separate amount for each case.** (Enter dollar amount.)

1. \$ \_\_\_\_\_

2. \$ \_\_\_\_\_

3. \$ \_\_\_\_\_

4. \$ \_\_\_\_\_

5. \$ \_\_\_\_\_

**SUGGESTIONS TO IMPROVE RATE  
RELIEF PROCESS**

5. Overall, to what extent should the rate relief process be changed?  
(Check one)

1. ☐ Little or no extent.

2. ☐ Some extent.

3. ☐ Moderate extent.

4. ☐ Great extent.

5. ☐ Very great extent.

6. ☐ Don't know / Can't comment.

**Appendix IV**  
**Survey of U.S. Class I Railroads**

6. Below are listed common suggestions made for improving the rate complaint process. In your opinion, how important, if at all, are each of the following suggestions for improving the rate relief process? *(Check one category for each suggestion. If you are recommending no changes to a particular item, please check not important. If you are unsure, please check don't know.)*

☐ There is no reason to change any part of the process. The process works under its current form.

<b>Potential Changes to the Rate Relief Process</b>		<b>Extremely Important</b>	<b>Very Important</b>	<b>Moderately Important</b>	<b>Somewhat Important</b>	<b>Not Important</b>	<b>Don't Know</b>
1a.	Use of mandatory binding arbitration between shippers and railroads to resolve rate disputes.						
1b.	Use of mandatory arbitration with non-binding results.						
2.	Increase the use of voluntary binding arbitration between shippers and railroads to resolve rate disputes.						
3a.	Lower STB's jurisdictional threshold from the current level of 180 percent of revenue to variable cost.						
3b.	What jurisdictional threshold would you suggest? _____ %						
4.	Simplify the STB requirement to prove market dominance by eliminating the product and/or geographic competition criteria.						
5.	Reduce or eliminate the complaint fees that shippers must pay in order to file a complaint with the STB.						
6.	Shorten STB's time limits for deciding rate relief cases (currently, the guideline is no more than 16 months.)						
7.	Other (Please specify) _____						

**Appendix IV  
Survey of U.S. Class I Railroads**

7. Below are listed some common suggestions made by shippers and others for improving competition in the railroad industry. In your opinion, how important, if at all, are each of the following suggestions for improving competition in the railroad industry? (Check one category for each suggestion. . If you are recommending no changes to a particular item, check not important. If you are unsure, please check don't know.)

[ ] There is no reason to change any part of the railroad industry. There is currently sufficient competition in the industry.

Potential Changes to Increase Competition in the Railroad Industry	Extremely Important	Very Important	Moderately Important	Somewhat Important	Not Important	Don't Know
1. Require railroads to quote rates for all route "segments" including those subject to "bottleneck" conditions.						
2. Require STB to grant trackage rights if it is found that competition is not adequate.						
3. Require railroads to increase rail access for short-line and regional railroads.						
4. Allow shippers to specify the routing of their shipments including interchange points (commonly called open routing).						
5. Require STB to grant reciprocal switching at the nearest junction or interchange upon reasonable request of a shipper or railroad.						
6. Other (Please specify) _____ _____ _____						
7. Other (Please specify) _____ _____ _____						

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**Appendix IV**  
**Survey of U.S. Class I Railroads**

**COMMENTS (OPTIONAL)**

8. Please feel free to share any other information that you wish with us regarding the Surface Transportation Board rate relief process, this study, or the questions in this questionnaire. Please use the following space or attach additional sheets as necessary.

We may wish to contact you at a later time regarding your responses to this questionnaire. So that we may contact the most knowledgeable party, please complete the following information:

Railroad Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**Thank you for your cooperation and assistance! This concludes the questionnaire.**

# Major Contributors to This Report

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